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# federal register

Thursday
December 22, 1988

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### WASHINGTON, DC

**WHEN:** January 26, at 9:00 a.m.
**WHERE:** Office of the Federal Register,
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**WHEN:** January 12, at 9:00 a.m.
**WHERE:** Room 8544,
Federal Building,
300 N. Los Angeles St.,
Los Angeles, CA
**RESERVATIONS:** Call the Federal Information Center,
Los Angeles 213–894–3800

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# Rules and Regulations

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## DEPARTMENT OF THE TREASURY

### Office of the Comptroller of the Currency

### 12 CFR Part 7

**[Docket No. 88-18]**

### Employee Stock Option and Stock Purchase Plans; Charges by National Banks

**AGENCY:** Office of the Comptroller of the Currency, Treasury.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** This final rule makes technical amendments to 12 CFR 7.5015, relating to employee stock option and stock purchase plans, and 12 CFR 7.8000, which governs charges by national banks. The rule removes from § 7.5015 a reference to 12 CFR 13.1, which was rescinded in 1980. Separately, the rule restores to § 7.8000 language inadvertently omitted from its codification following an amendment in 1984.

**EFFECTIVE DATE:** December 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Horace G. Sneed, Attorney, Legal Advisory Services Division, telephone (202) 447-1880, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East, SW., Washington, DC 20219.

**SUPPLEMENTARY INFORMATION:** This final rule deletes an obsolete reference in § 7.5015 to 12 CFR 13.1, which was rescinded on October 15, 1980, 45 FR 68603. As amended, § 7.5015 continues to state that national banks may provide employee stock purchase and stock option plans.

Section 7.8000 was amended on December 2, 1983, 48 FR 54319, to make it clear that Federal law preempts state laws that prohibit or limit service charges on deposit accounts. As amended, the rule included a paragraph (d) which provided that the rule did not apply to service charges imposed by a national bank in its capacity as fiduciary, or to service charges on dormant accounts. On July 11, 1984, 49 FR 28237, § 7.800 was further amended. Although subsection (d) was not changed, it was inadvertently left out of the codification of the rule in 12 CFR 7.8000. This final rule corrects the omission by restoring subsection (d) to 12 CFR 7.8000, so that future codifications will contain the text of the rule as it should have appeared in the Code of Federal Regulations following the July 11, 1984 amendment.

No collection of information requirements are involved in this technical amendment.

#### Regulatory Impact Analysis

Pursuant to Executive Order 12291, the Office of the Comptroller of the Currency has determined that this amendment does not constitute a major rule. Therefore, a regulatory impact analysis is not required.

#### Regulatory Flexibility Act

The Comptroller of the Currency has certified that this final rule will not have a significant impact on a substantial number of small banks or other small entities.

#### Adoption Without Notice and Comment and Reason for Immediate Effective Date

Publication for notice and comment and delayed effectiveness as set forth in the Administrative Procedure Act, 5 U.S.C. 553, are not required. The amendments made by this final rule are technical in nature and have no substantive effect on the banking industry or the public.

#### List of Subjects in 12 CFR Part 7

Deposit accounts, Employee stock option plans, National Banks, Service charges.

#### Authority and Issuance

For the reasons set forth in the preamble, Part 7 of Chapter I of Title 12 of the Code of Federal Regulations is amended to read as follows:

### PART 7—[AMENDED]

1. The authority citation for 12 CFR Part 7 is amended to read as follows:

**Authority:** 12 U.S.C. 93a.

2. Section 7.5015 is revised to read as follows:

**§ 7.5015 Employee stock option and stock purchase plans.**

National banks may provide employee stock option and stock purchase plans.

3. Section 7.8000 is amended by adding paragraph (d) as follows:

**§ 7.8000 Charges by national banks.**

* * * * *

(d) This interpretive ruling does not apply to: (1) Charges imposed by a national bank in its capacity as a fiduciary which are governed by 12 CFR Part 9; and

(2) Service charges on dormant accounts which are governed by 12 CFR 7.7515.

Date: December 19, 1988.

**Robert L. Clarke,**

*Comptroller of the Currency.*

[FR Doc. 88-29386 Filed 12-21-88; 8:45]

**BILLING CODE 4810-33-M**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Airspace Docket No. 88-ASO-18]**

### Amendment to Transition Area; Vidalia, GA

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This amendment revises the Vidalia, Georgia, transition area by adding an arrival area extension which will provide airspace protection for aircraft executing a new Nondirectional Radio Beacon (NDB) Runway 24 Standard Instrument Approach Procedures (SIAP) to the Vidalia Municipal Airport predicated on the Onion Radio Beacon (RBN). Also, the geographic position coordinates are being revised for the Vidalia Municipal Airport and the Reidsville Airport.

**EFFECTIVE DATE:** 0901 u.t.c., April 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

**History**

On October 27, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Vidalia, Georgia, transition area (53 FR 43447). The proposed amendment would add an arrival area extension to provide airspace protection for aircraft executing a new NDB Runway 24 SIAP to the Vidalia Airport from the Onion RBN. It would also revise the geographic position coordinates for both the Vidalia Municipal and Reidsville Airports. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No Comments objecting to the proposal were received. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations amends the Vidalia, Georgia, transition area by adding an arrival area extension. This action is necessary to provide airspace protection for aircraft executing a new NDB Runway 24 SIAP to the Vidalia Municipal Airport from the Onion RBN. This action also revises the geographic position coordinates of the Vidalia Municipal Airport and the Reidsville Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Transition area.

**Adoption of the Amendment**

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.181 [Amended]**

2. Section 71.181 is amended as follows:

**Vidalia, Georgia [Amended]**

By deleting the existing description and adding the following: "That airspace extending upward from 700 feet above the surface within and 8.5-mile radius of Vidalia Municipal Airport (lat. 32°11'30" N., long. 82°22'30" W.); within 2.5 miles each side of the 065° bearing from Onion RBN (lat. 32°13'23" N., long. 82°17'54" W.), extending from the 8.5-mile radius area to seven miles northeast of the RBN; within a 6.5-mile radius of Reidsville Airport, Reidsville, Georgia, (lat. 32°03'32" N., long. 82°09'00" W.); within three miles each side of the 295° bearing from Prison RBN (lat. 32°03'27" N., long. 82°09'09" N.), extending from the 6.5-mile radius area to 8.5 miles northwest of RBN."

Issued in East Point, Georgia, on December 9, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-29310 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-AWP-17]**

## Proposal Revision to Lihue, HI, Control Zone and Transition Area

**AGENCY:** Federal Aviation Administration. (FAA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This rule revises the Lihue, Hawaii, control zone and transition area. It provides controlled airspace for aircraft executing published instrument approach procedures to the Lihue Airport.

**EFFECTIVE DATE:** 0901 u.t.c., February 9, 1989.

**FOR FURTHER INFORMATION CONTACT:** Daniel K. Martin, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0166.

**SUPPLEMENTARY INFORMATION:**

**History**

On October 20, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the control zone and transition area in Lihue, HI (53 FR 41198). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations revises the Lihue, HI, control zone and transition area. This action will provide controlled airspace for aircraft executing standard instrument approaches to Lihue Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**List of Subjects in 14 CFR Part 71**

Aviation safety, Control zones, Transition areas.

**Adoption of the Amendment**

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Lihue, HI [Revised]**

Within a 5-mile radius of Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.); beginning at lat. 21°54'50" N., long. 159°21'45" W; thence clockwise to 21°58'25" N., long. 159°15'50" W.; to lat. 21°55'15" N., long. 159°12'20" W.; to lat. 21°51'15" N., long.

159°11'15" W.; to lat. 21°50'45" N., long. 159°22'00" W.; thence to point of beginning.

**§ 71.181 [Amended]**

3. Section 71.181 is amended as follows:

Lihue, HI [Revised]

That airspace extending upward from 700 feet above the surface beginning at lat. 21°58'25" N., long. 159°15'50" W.; thence counter clockwise via the 5-mile radius circle of the Lihue Airport (lat. 21°58'45" N., long. 159°20'29" W.;) to lat. 22°03'10" N., long. 159°18'20" W.; to lat. 22°05'50" N., long. 159°15'30" W.; thence clockwise via the 10-mile radius circle to lat. 21°55'15" N., long. 159°12'20" W.; to point of beginning.

Issued in Los Angeles, California, on December 5, 1988.

Jacqueline L. Smith,

*Manager, Air Traffic Division, Western-Pacific Region.*

[FR Doc. 88-29311 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

## SECURITIES AND EXCHANGE COMMISSION

### 17 CFR Part 200

**[Release No. 34-26348]**

### Delegation of Authority to Director of Division of Market Regulation

**AGENCY:** Securities and Exchange Commission.

**ACTION:** Final rule amendment.

**SUMMARY:** The Commission is amending its regulation concerning Organization and Program Management to delegate authority to the Director of the Division of Market Regulation to grant exemptions, either unconditionally or on specified terms and conditions, from the broker-dealer registration requirements of section 15(a)(1) of the Securities Exchange Act of 1934 ("Exchange Act"), pursuant to section 15(a)(2) of the Exchange Act, with respect to registered government securities brokers or dealers effecting any transactions in, or inducing or attempting to induce the purchase or sale of, a security principally backed by a guaranty of the United States. This amendment should facilitate review and consideration of applications for such exemptions.

**EFFECTIVE DATE:** December 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** John Polanin, Jr., (202) 272-2848, Office of Legal Policy, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 5-1, Washington, DC 20549.

**SUPPLEMENTARY INFORMATION:** The Securities and Exchange Commission today announced an amendment to Rule 30-3 of its regulation concerning Organization and Program Management [1] governing delegation of authority to the Director of the Division of Market Regulation ("Director"). The amendment adds to the rule new paragraph (a)(47), which authorizes the Director to grant exemptions to registered government securities brokers [2] or government securities dealers,[3] where appropriate, from the broker-dealer registration requirements of section 15(a)(1) of the Exchange Act,[4] solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States. Section 15(a)(1) provides as follows:

> It shall be unlawful for any broker or dealer which is either a person other than a natural person or a natural person not associated with a broker or dealer which is a person other than a natural person (other than such a broker or dealer whose business is exclusively intrastate and who does not make use of any facility of a national securities exchange) to make use of the mails or any means or instrumentality of interstate commerce to effect any transactions in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) unless such broker or dealer is registered in accordance with subsection (b) of this section.[5]

Under section 15(a)(2), the Commission currently has authority, "by rule or order, as it deems consistent with the public interest and the protection of investors, [to] conditionally or unconditionally exempt from paragraph (1) of this subsection any broker or dealer or class of broker[s] or dealer[s] specified in such rule or order." [6]

The need for the instant exemption arises with respect to securities issued in connection with the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 ("Appropriations Act").[7] Title III of the Appropriations Act authorizes the issuance of U.S. Government guarantees of 90% of all principal and interest due under new loans obtained by various foreign nations to finance the prepayment of certain loans previously made to these nations under the Foreign Military Sales ("FMS") credit program by the Defense Security Assistance Agency of the Department of Defense and the United States Federal Financing Bank, and to pay arrearages thereon.[8] Any securities backed by notes covered by this guaranty would not meet the literal definition of government securities in section 3(a)(42) of the Exchange Act.[9] That definition includes only securities that are issued, or guaranteed as to principal or interest by, the United States, corporations designated by the Secretary of the Treasury in which the United States has an interest, or corporations the securities of which are designated specifically by statute as exempt securities for purposes of the Exchange Act, or certain puts, calls, straddles, options, or privileges on such securities. Therefore, government securities brokers or dealers that are registered only as government securities brokers or government securities dealers under section 15C(a)(2) of the Exchange Act [10] ordinarily would not be able to trade such securities without registering with the Commission under section 15(b) of the Exchange Act.[11]

However, the Commission recently issued an order exempting certain registered government securities brokers from the registration requirements of section 15(a),[12] solely with respect to publishing quotations and effecting transactions in securities issued in connection with the refinancing under the Appropriations Act of FMS loans made to the Government of Israel.[13] Thereafter, the Commission issued similar orders exempting certain registered government securities brokers and a registered government securities dealer from broker-dealer registration with respect to an additional offering of securities issued in connection with the refinancing of Israeli FMS loans.[14]

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[1] 17 CFR 200.30-3.

[2] 15 U.S.C. 78c(a)(43).

[3] 15 U.S.C. 78c(a)(44).

[4] 15 U.S.C. 78o(a)(1).

[5] *Id.*

[6] 15 U.S.C. 78o(a)(2).

[7] Pub. L. 100-202, 101 Stat. 1329-131 (1987).

[8] The Department of the Treasury has adopted regulations under the Appropriations Act to implement the refinancing of these FMS loans. 31 CFR Part 25.

[9] 15 U.S.C. 78c(a)(42).

[10] 15 U.S.C. 78o-5(a)(2).

[11] 15 U.S.C. 78o(b).

[12] 15 U.S.C. 78o(a).

[13] Letter from Jonathan G. Katz, Secretary, SEC, to Neil Flanagin, Esq., Sidley & Austin (September 22, 1988) (Chapdelaine and Co. Government Securities, Inc., Fundamental Brokers Incorporated, Garban Limited, and RMJ Securities Corporation).

[14] Letter from Jonathan G. Katz, Secretary, SEC, to Neil Flanagin, Esq., Sidley & Austin (December 9, 1988) (RMJ Securities Corporation and Liberty Brokerage Inc.); letter from Jonahtan G. Katz, Secretary, SEC, to Richard B. Smith, Esq., Davis Polk and Wardwell (December 9, 1988) (Discount Corporation of New York).

These exemptions were conditioned on, among other things, compliance with all rules adopted by the Secretary of the Treasury pursuant to section 15C(b) of the Exchange Act,[15] including all applicable net capital regulations.

The Commission thus has received several requests for exemptions concerning this class of securities in a relatively short time, and the Appropriations Act contemplates the refinancing of numerous additional FMS loans. Accordingly, the Commission has determined to delegate its exemptive authority under section 15(a)(2) [16] to the Director of the Division of Market Regulation with respect to securities principally backed by a guaranty of the United States. The delegation of this authority will conserve the resources of the Commission and the Division, because the staff will not be required to present requests for such exemptions to the Commission itself for resolution.[17]

The Commission finds, in accordance with section 553(b)(A) of the Administrative Procedure Act,[18] that this amendment relates solely to agency organization, procedure, or practice, and does not relate to a substantive rule. Accordingly, notice, opportunity for public comment, and publication of the amendment prior to its effective date are unnecessary.

**List of Subjects in 17 CFR Part 200**

Administrative practice and procedure, Securities. Text of Amendment.

The Commission hereby amends Title 17, Chapter II of the Code of Federal Regulations as follows:

## PART 200—ORGANIZATIONS; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

### Subpart A—Organization and Program Management

1. The authority cituation for Part 200, Subpart A, continues to read as follows:

**Authority:** Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855, 15 U.S.C. 77s, 78w, 79t, 77sss, 80a–37, 80b–11 * * *

2. 17 CFR 200.30–3 is amended by adding new paragraph (a)(47) to read as follows:

[15] 15 U.S.C. 78*o*–5(b).

[16] 15 J.S.C. 78*o*(a) (2).

[17] In any particular case where the Director believes it appropriate, the Director still may submit a request for an exemption to the Commission. 17 CFR 200.30–3(g).

[18] 5 U.S.C. 553(b)(A).

**§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.**

* * * * *

(a) * * *

(47) Pursuant to section 15(a)(2) of the Act, 15 U.S.C. 78*o*(a)(2), to review and, either unconditionally or on specified terms and conditions, grant exemptions from the broker-dealer registration requirements of section 15(a)(1) of the Act, 15 U.S.C. 78*o*(a)(1), to government securities brokers or government securities dealers that have registered with the Commission under section 15(a)(2) of the Act, 15 U.S.C. 78*o*–5(a)(2), solely with respect to effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security principally backed by a guaranty of the United States.

* * * * *

By the Commission.

Dated: December 12, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–29337 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

## DEPARTMENT OF THE TREASURY

### Bureau of Alcohol, Tobacco and Firearms

### 27 CFR Part 9

**[T.D. ATF–279; RE: Notice No. 655]**

## Fredericksburg in the Texas Hill Country Viticultural Area

**AGENCY:** Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

**ACTION:** Final rule, Treasury decision.

**SUMMARY:** This final rule establishes a viticultural area known as Fredericksburg in the Texas Hill Country which is located in Gillespie County, Texas. The petition was submitted by Mr. Karl W. Koch of the Pedernales Vineyards. The establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify wines they purchase. The use of this viticultural area as an appellation of origin will help winemakers distinguish their products from wines made in other areas.

**EFFECTIVE DATE:** January 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert L. White, Wine and Beer Branch, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20226 (202–566–7626).

**SUPPLEMENTARY INFORMATION:**

**Background**

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR Part 4. These regulations allow the establishment of definitive viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new Part 9 to 27 CFR, providing for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

Section 4.25a(e)(1), Title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of Part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area.

**Petition**

Mr. Karl W. Koch of the Pedernales Vineyards petitioned ATF to establish a viticultural area in Gillespie County, Texas, to be known as "Fredericksburg in the Texas Hill Country." This viticultural area is located entirely within Gillespie County in the central part of the State approximately 80 miles west of Austin. The viticultural area consists of approximately 110 square miles. There are approximately eight vineyards in the area which are devoted to wine grapes with a total of about 50 acres under cultivation. Additionally, there are many commercial peach growers in the area with test plantings of grapes. In response to this petition, ATF published a notice of proposed rulemaking, Notice No. 655, in the **Federal Register** on February 19, 1988 (53 FR 4999), proposing the establishment of the Fredericksburg in the Texas Hill Country viticultural area.

**Comments**

Two comments were received during the comment period. One comment was from Mr. Robert P. Oberhelman of Oberhellmann Vineyards. The other comment was from Mr. Ned E. Simes of Grape Creek Vineyard.

Both commenters opposed the name "Fredericksburg in the Texas Hill Country" for the following reasons:

(1) The area boundaries proposed actually identifies the Pedernales Valley which has been the recognized name for this area since the time of the Spanish

explorers. The name "Fredericksburg" would be confusing since it identifies only the urban area and the center of commerce for Gillespie County and the Pedernales Valley.

(2) The name "Fredericksburg" has never been used to identify the name outside the limits of the city. The name "Fredericksburg" was used by the early settlers for their settlement, and not for the area.

(3) The term "Hill Country" is an informal one for the Edwards Plateau or the Balcones Escarpment. Only these two neames are used on geographical maps to identify this large area.

Mr. Simes further stated that even the residents of Texas cannot agree upon the boundaries of the "Hill Country." ATF conducted an independent investigation as to whether the proposed viticultural area is locally and/or nationally known as "Fredericksburg in the Texas Hill Country." Numerous people were interviewed including the petitioner, the two commenters, several members of the Fredericksburg Chamber of Commerce, and several of the residents both within and outside the city limits of Fredericksburg. Also, the county extension horticulturist and an employee from the Soil Conservation Service were interviewed.

All of the people interviewed, with the exception of the two commenters, stated that they felt the area within the boundaries of the viticultural area is considered the Fredericksburg area. This finding is further verified by the extent of the area which makes up the Fredericksburg telephone exchange in the local phone book and by the extent of the area which is considered the Fredericksburg school district. It is possible that the name "Pedernales Valley" could have been used for this area but the use of this name would have resulted in the boundaries of the Fredericksburg area having to be greatly extended. In addition, many of the residents of the Fredericksburg area consider the name "Pedernales Valley" to be more representative of the area further down the Pedernales River toward Austin. This area down river has a somewhat lower elevation than the Fredericksburg area.

We agree that the term "Texas Hill Country," or just "Hill Country," is an informal one for the Edwards Plateau or the Balcones Escarpment. However, the term "Hill Country" is widely used in the State of Texas and the State is encouraging its use as a way to advertise the area. While it is true that even the residents of Texas cannot agree upon the boundaries of the "Hill Country," it is also true that the Fredericksburg area is always included in the "Hill Country" no matter whose boundary descriptions are being used. Everyone who was interviewed agreed that Fredericksburg was in the "Hill Country" and all literature published by the State of Texas clearly shows that Fredericksburg is in the "Hill Country." Therefore, we do not believe that use of the name "Fredericksburg in the Texas Hill Country" is misleading in any way. As a result of the information obtained during our investigation, we have decided to approve the "Fredericksburg in the Texas Hill Country" viticultural area as proposed in the notice of proposed rulemaking.

**Viticultural Area Name**

The name "Fredericksburg" can be found on several U.S.G.S. maps of the area surrounding the city of Fredericksburg. The area around Fredericksburg is described in various newspaper and magazine articles, as well as brochures published by the State of Texas, as the "Texas Hill Country." Therefore, "Fredericksburg in the Texas Hill Country" is approved as the name for this viticultural area.

**Local Viticultural History**

Fredericksburg was founded May 8, 1846, by German immigrants under the auspices of the Society for the Protection of German Immigrants in Texas. The first colonization was of New Braunfels in 1845. A few years later, Fort Martin Scott was established southeast of Fredericksburg.

The Commissioner General of the Society, also known as the "Adelsverein," was Baron Ottfried Hans Von Meusebach, a German nobleman who took the name of John O. Meusebach once settled in Fredericksburg.

The city of Fredericksburg derived its name from German nobleman Prince Frederick of Prussia, who was the highest ranking member of the "Adelsverein." This society sponsored the colonization of the Fisher-Miller Grant in Central Texas. Vineyards were confined during this time to a very small number of Germans in the eastern settlements. The few vineyards which were established often drew favorable comments from observers, who foresaw a great future for this agricultural specialty.

More common was the practice of making wine from wild grapes, principally the variety known as the Mustang, which was found in abundance in the valleys of the Colorado, San Antonio, and Guadalupe rivers and their tributaries. The abundance of wild grapes convinced the early settlers that domesticated types would also thrive, and vine clippings brought from Europe were planted by Germans in the very first year at New Braunfels and shortly thereafter around Castroville. Experiments continued for a number of years in the western settlements, including the hill on the north side of Fredericksburg, but in the end it was realized that the imported European vines would not grow properly in Texas, and viticulture was, with few exceptions, abandoned. A commercial winery existed as late as the post-World War II period in Fredericksburg, selling products made from wild grapes and berries, but the wine was made primarily for home use to satisfy a cultural beverage preference. Currently, present day technology has made viticulture a more practical venture than a century or so ago.

Consequently, recent efforts in viticulture in the Fredericksburg area show promise of producing a unique wine that will parallel and/or supplement the peach business for which the Fredericksburg area has long been well known.

**Geographical/Climatological Features**

The Fredericksburg in the Texas Hill Country viticultural area is distinguished from surrounding areas by differences in geography, soil and climate. These differences are based on the following:

*(a) Geography*

The Fredericksburg in the Texas Hill Country viticultural area is on the Edwards Plateau which is the result of the geological uplift phenomenon. The Pedernales watershed originates due west of Fredericksburg a few miles from the Gillespie-Kerr-Kimble county line at an elevation of 2,200 feet. The Pedernales River flows easterly to Lake Travis (below 700 feet elevation) which is a part of the Austin city water supply. The elevation of the viticultural area is between 1,500 and 1,900 feet. At an attitude above 1,900 feet, there is a greatly increased risk of spring frost.

The viticultural area is a "bowl" shaped area with a relatively flat bottom and relatively steep sides. It is the bottom of the bowl that is suitable for farming. There is no similar farming area for at least 100 miles west of Austin and San Antonio. Most of the surrounding area is ranching, not crops and orchards. The majority of the area, including the town of Fredericksburg, lies to the north of the Pedernales River.

*(b) Soil*

The soils of the viticultural area consist of the contiguous Luckenbach-

Pedernales-Heatly Soil Association which is on or near the Pedernales River and its tributaries at an approximate elevation of between 1,500 and 1,900 feet. These soils adjacent to the river, and the riverbed itself, near Fredericksburg contain an abundance of flint or chert which is hydrated silica from the ancient seabed that formed the Edwards Plateau. The Spanish word "Pedernale," from which the river derived its name, actually means "flintstone."

The higher elevations of the Pedernales River watershed are the source of the Alluvial Valley Soils of the viticultural area. The Luckenbach-Pedernales-Heatly Soil Association is composed of deep, sandy to loamy, gently sloping soils on uplands and terraces.

The Soil Conservation Service, U.S. Department of Agriculture, describes the Luckenbach-Pedernales-Heatly Soil Association as a sandy loam topsoil (mostly quartz with limited organic matter) over a reddish clay. This clay is high in the nutrients, phosphorus, potassium, and calcium, as well as other minerals. The red color is due to iron which helps peaches (and grapes) avoid a chloritic condition. About one-half of this Soil Association in Gillespie County is cultivated. The crops are sorghums, small grain, peaches, grapes, and tame pasture. The remaining one-half is used for rangeland and wildlife habitat.

*(c) Climate*

The Fredericksburg area, at latitude 30 degrees north, is far enough south to escape harsh winters. At an elevation of 1,747 feet and a distance of more than 200 miles inland from the coast, the Fredericksburg area escapes the hot, humid summers characteristic of many southern climates. Summer temperatures are more characteristic of the High Plains than of southern Texas. Smog is unknown, and severe storms are very rare.

Total annual precipitation averages 27.44 inches. The lack of rainfall is due to the distance north and west of the Gulf of Mexico. A result of the dry climate is an abundance of sunshine which is a requirement for quality fruit. The dry climate also reduces disease problems. The Fredericksburg area is generally cooler than surrounding areas. Summer nights at Fredericksburg average four to five degrees Fahrenheit cooler than at lower elevations east of the Hill Country. The growing season (freeze-free period) in the Fredericksburg area averages 219 days. The average date of the last occurrence of 32 degrees in spring and the first occurrence in fall are April 1 and November 6, respectively.

The altitude of the area serves two purposes. In winter there are over 850 hours per year at below 40 degrees Fahrenheit. This maintains a proper winter dormancy factor. A second altitude benefit is that of temperature change between night and day. A difference in temperature is required to properly mature a fruit. Because of the higher elevation of the Fredericksburg area, the temperature difference between night and day is more pronounced than in surrounding areas.

Weather maps published by the Bureau of Business Research at the University of Texas show that the viticultural area is located at or near departure or change points from surrounding areas for temperature, precipitation and relative humidity. The Fredericksburg area is generally cooler than areas to the north and east while about the same mean annual temperature as areas to the immediate south and west. The mean annual precipitation for the viticultural area is about the same as the area to the north, more than the area to the west, and less than the areas to the east and south. The mean annual relative humidity for the Fredericksburg area is about the same as the areas to the north and south, lower than the area to the east, and higher than the area to the west.

**Boundaries**

The boundaries proposed by the petitioner are adopted. An exact description of these boundaries is discussed in the regulations portion of this document. ATF believes that these boundaries delineate an area with distinguishable geographic and climatic features.

**Miscellaneous**

ATF does not wish to give the impression by approving the Fredericksburg in the Texas Hill Country viticultural area that it is approving or endorsing the quality of the wine from this area. ATF is approving this area as being distinct from surrounding areas, not better than other areas. By approving the area, wine producers are allowed to claim a distinction on labels and advertisements as to origin of the grapes. Any commercial advantage gained can only come from consumer acceptance of Fredericksburg in the Texas Hill Country wines.

**Executive Order 12291**

It has been determined that this final regulation is not a "major rule" within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

**Regulatory Flexibility Act**

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in the reporting, recordkeeping, or other compliance burdens on a substantial number of small entities. The final rule is not expected to have significant secondary or incidental effects on a substantial number of small entities. Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

**Paperwork Reduction Act**

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

**Disclosure**

A copy of the petition, along with the appropriate maps with boundaries marked, is available for inspection during normal business hours at the following location: ATF Reading Room, Room 4412, Office of Public Affairs and Disclosure, Ariel Rios Federal Building, 1200 Pennsylvania Avenue, NW., Washington, DC.

**Drafting Information**

The principal author of this document is Robert L. White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

**List of Subjects in 27 CFR Part 9**

Administrative practice and procedure, Consumer protection, Viticultural areas, Wine.

27 CFR Part 9 is amended as follows:

## PART 9—[AMENDED]

**Paragraph 1.** The authority citation for Part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

**Par. 2.** The table of sections in 27 CFR Part 9, Subpart C, is amended to add § 9.125 to read as follows:

### Subpart C—Approved American Viticultural Areas

Sec.

* * * * *

9.125 Fredericksburg in the Texas Hill Country.

* * * * *

**Par. 3.** Subpart C of 27 CFR Part 9 is amended by adding § 9.125 to read as follows:

**§ 9.125 Fredericksburg in the Texas Hill Country.**

(a) *Name.* The name of the viticultural area described in this section is "Fredericksburg in the Texas Hill Country."

(b) *Approved maps.* The appropriate maps for determining the boundaries of the Fredericksburg in the Texas Hill Country viticultural area are six U.S.G.S. topographical maps of the 1:24,000 scale. They are titled:

(1) Stonewall Quadrangle (1961);

(2) Cain City Quadrangle (1963);

(3) Fredericksburg East Quadrangle (1967, photorevised 1982);

(4) Cave Creek School Quadrangle (1961);

(5) Fredericksburg West Quadrangle (1967, photorevised 1982); and

(6) Lady Bird Johnson Park Quadrangle (1964, photoinspected 1979).

(c) *Boundaries.* The Fredericksburg in the Texas Hill Country viticultural area is located entirely in Gillespie County, Texas, in the central part of the State approximately 80 miles west of Austin. The beginning point is on the Stonewall Quadrangle map near Blumenthal at a point on U.S. Route 290 approximately .1 mile east of bench mark (BM) 1504, at the junction of a light-duty road known locally as Jung Road.

(1) From the beginning point, the boundary proceeds on Jung Road in a northwesterly direction across the Pedernales River.

(2) Then northwesterly approximately 1 mile along Jung Road as it parallels the Pedernales River.

(3) Then north along Jung Road approximately 3.9 miles to a point where Jung Road meets a medium-duty road known locally as Texas Ranch Road 2721.

(4) Then westerly approximately .1 mile on Texas Ranch Road 2721 to a point where it meets a medium-duty road known locally as Texas Ranch Road 1631.

(5) Then northeasterly along Texas Ranch Road 1631 approximately 1 mile to a point where Texas Ranch Road 1631 crosses the 1,800 foot contour line.

(6) Then northwesterly in a meandering manner along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 16.

(7) Then in a generally westerly direction along the 1,800-foot contour line to the point where the 1,800-foot contour line crosses State Route 965.

(8) Then in a northwesterly and then generally a southeasterly direction along the 1,800-foot contour line to a point where the 1,800-foot contour line goes just south of the Kordzik Hills approximately 1 mile due east of the city of Fredericksburg.

(9) Then continuing on the 1,800-foot contour line in a generally northwesterly, southerly, and again northwesterly direction to the point where the 1,800-foot contour line crosses Loudon Road approximately 4 miles northwest of Fredericksburg.

(10) Then continuing on the 1,800-foot contour line in a northwesterly, then generally a southeasterly, westerly and finally a southerly direction to a point where the 1,800-foot contour line crosses a light-duty road known locally as Hayden Ranch Road about 50 yards north of Texas Ranch Road 2093.

(11) Then 50 yards south on Hayden Ranch Road to Texas Ranch Road 2093 and then east on Texas Ranch Road 2093 approximately .15 mile to an unimproved, southbound, gravel and dirt county road known locally as Beverly Gold's Road.

(12) Then approximately 2.6 miles south on Beverly Gold's Road to a point where it joins Texas State Route 16.

(13) Then approximately 1.5 miles northeast on State Route 16 to a light-duty county road known locally as Bear Creek Road.

(14) Then approximately 1 mile in a southeasterly, northeasterly, and then a southerly direction along Bear Creek Road to the point where the road crosses the 1,700-foot contour line.

(15) Then in a generally easterly direction for approximately 10 miles along the 1,700-foot contour line to a point where the 1,700-foot contour line crosses Texas Ranch Road 1376.

(16) Then approximately 3.1 miles southeast along Texas Ranch Road 1376 to a light-duty road at Luckenbach known locally both as Kunz-Klien Road and Luckenbach Road.

(17) Then approximately 1.3 miles in a generally northeasterly and then an easterly direction along Luckenbach Road and continuing along Luckenbach Road in a northerly direction about 2.5 miles to the point where Luckenbach Road joins U.S. Route 290.

(18) Then west approximately .2 mile on U.S. Route 290 to the intersection with Jung Road, the point of beginning.

November 4, 1988.

**Stephen E. Higgins,**

*Director.*

*Approved:* December 2, 1988.

**John P. Simpson,**

*Deputy Assistant Secretary (Regulatory, Trade and Tariff Enforcement).*

December 2, 1988.

[FR Doc. 88-29317 Filed 12-21-88; 8:45 am]

BILLING CODE 4810-31-M

## DEPARTMENT OF JUSTICE

### 28 CFR Part 16

**[AAG/A Order No. 26-88]**

### Exemption of Records Systems Under the Privacy Act

**AGENCY:** Department of Justice.

**ACTION:** Final rule.

**SUMMARY:** The Department of Justice is exempting a Privacy Act system of records from subsection (d) of the Privacy Act, 5 U.S.C. 552a. This system is the "Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA-003)." Records in this system contain copies of records requested from the "Executive Clemency Files (JUSTICE/OPA-001)" under the Freedom of Information/Privacy Acts and therefore relate to official Federal investigations and matters of law enforcement. The exemption is needed to protect ongoing investigations and the identities of confidential sources involved in such investigations.

**EFFECTIVE DATE:** December 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** J. Michael Clark, (202) 272-6474.

**SUPPLEMENTARY INFORMATION:** A proposed rule with invitation to comment was published in the Federal Register on April 20, 1988 (53 CFR 12951). The public was given 30 days to comment. One comment was received which did not necessitate any change. A copy of the comment has been placed in the record.

This order relates to individuals other than small business entities. Nevertheless, pursuant to the requirement of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612, it is hereby stated that the order will not

have "a significant economic impact on a substantial number of small entities."

**List of Subjects in 28 CFR Part 16**

Administrative practice and procedure, Courts, Freedom of information, Privacy, and Sunshine Acts.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, 28 CFR Part 16 is amended by revising § 16.79 as set forth below.

Date: December 7, 1988.

**Harry H. Flickinger,**

*Assistant Attorney General for Administration.*

## PART 16—[AMENDED]

1. The authority for Part 16 continues to read as follows:

**Authority:** 28 U.S.C. 509, 510; 5 U.S.C. 301, 552, 552a; 31 U.S.C. 483a unless otherwise noted.

2. Section 16.79 of 28 CFR Part 16 is amended to read as follows:

**§ 16.79 Exemption of Pardon Attorney Systems.**

(a) The following systems of records are exempt from 5 U.S.C. 552a(d):

(1) Executive Clemency Files (JUSTICE /OPA–001).

(2) Freedom of Information/Privacy Acts (FOI/PA) Request File (JUSTICE/OPA–003).

These exemptions apply only to the extent that information in these systems is subject to exemption pursuant to 5 U.S.C. 552a(j)(2).

(b) Exemption from subsection (d) is justified for the following reasons:

(1) Executive Clemency Files contain investigatory and evaluative reports relating to applicants for Executive clemency. The FOI/PA Request File contains copies of documents from the Executive Clemency Files which have not been released either in whole or in part pursuant to certain provisions of the FOI/PA. Release of such information to the subject would jeopardize the integrity of the investigative process, invade the right of candid and confidential communciations among officials concerned with recommending clemency decisions to the President, and disclose the identity of persons who furnished information to the Government under an express or implied promise that their identities would be held in confidence.

(2) The purpose of the creation and maintenance of the Executive Clemency Files is to enable the Pardon Attorney to prepare for the President's ultimate decisions on matters which are within the President's exclusive jurisdiction by reason of Article II, Section 2, Clause 1 of the Constitution, which commits pardons to the exclusive discretion of the President.

[FR. Doc. 88–29413 Filed 12–21–88; 8:45 am]
BILLING CODE 4410–01

## DEPARTMENT OF THE INTERIOR

## Office of Surface Mining Reclamation and Enforcement

## 30 CFR Part 935

## Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSMRE is announcing the approval of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Number 35) concerns liability insurance coverage of permit applicants and of agents performing reclamation for permit applicants. The amendment is intended to reduce the required coverage to the minimum required by the corresponding Federal regulations.

**EFFECTIVE DATE:** December 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**

### I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982 **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15, and 935.16.

### II. Submission of Amendment

By letter dated August 23, 1988 (Administrative Record No. OH–1094), Ohio submitted proposed revisions to paragraph (B) of Rule 13–7–07 of Chapter 1501 of the Ohio Administrative Code (OAC).

OSMRE announced receipt of the proposed amendments in the September 21, 1988 **Federal Register** (53 FR 36585), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Ohio program.

*1. OAC 1501:13–7–07(B)(2)*

Ohio is revising this paragraph to eliminate the separate minimum coverage requirements for liability insurance for bodily injury and property damage. The minimum insurance coverage required for bodily injury and property damage combined is now $300,000 for each occurrence and $500,000 in the aggregate. In addition, Ohio has deleted provisions requiring higher coverage for certain operations.

The Director finds that the reduced, combined minimum insurance coverage requirements proposed by Ohio are identical to those of the corresponding Federal regulation at 30 CFR 800.60(a) and that they are therefore no less effective than that Federal regulation.

*2. OAC 1501:13–7–07(B)(3)*

Ohio is correcting any editorial error by substituting "renew" for "reclaim" in this paragraph, thus clarifying that insurance policies must include a rider requiring that the insurer notify the Chief, Division of Reclamation, if the policyholder fails to renew his or her coverage.

The Director finds that this change renders the State rule substantively identical to and therefore no less effective than its Federal counterpart at 30 CFR 800.60(c).

### IV. Disposition of Comments

*Public Comments*

The public comment period announced in the September 21, 1988 **Federal Register** (53 FR 36585) ended on October 21, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies

with an actual or potential interest in the Ohio program. No comments were received.

### V. Director's Decision

Based on the findings discussed above, the Director is approving Ohio Progam Amendment No. 35 as submitted on August 23, 1988, and is amending 30 CFR Part 935 to implement this decision.

This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to conform their programs with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

### VI. Procedural Determinations

*National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Executive Order 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

### List of Subjects in 30 CFR Part 935

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: December 19, 1988.

**Robert E. Boldt,**

*Deputy Director.*

For reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

## PART 935—OHIO

1. The Authority citation for Part 935 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 935.15, a new paragraph (hh) is added to read as follows:

**§ 935.15 Approval of regulatory program amendments.**

* * * * *

(hh) The following amendment concerning liability insurance, as submitted to OSMRE on August 23, 1988, is approved effective December 22, 1988: Revision of paragraph (B) of Rule 1501:13–7–07 of the Ohio Administrative Code.

[FR Doc. 88–29393 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–05–M

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## 30 CFR Part 935

## Ohio Regulatory Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

**ACTION:** Final rule; approval of amendment.

**SUMMARY:** OSMRE is announcing the approval, with certain exceptions, of a proposed amendment to the Ohio regulatory program (hereinafter referred to as the Ohio program) approved under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment (Program Amendment Number 34) modifies 17 Ohio rules in various subject areas for the purpose of maintaining consistency with revised Federal requirements, clarifying ambiguities, improving operational efficiency and implementing the additional flexibility afforded by Federal regulatory revisions.

**EFFECTIVE DATE:** December 22, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ms. Nina Rose Hatfield, Director, Columbus Field Office, Office of Surface Mining Reclamation and Enforcement, Room 202, 2242 South Hamilton Road, Columbus, Ohio 43232; Telephone: (614) 866–0578.

**SUPPLEMENTARY INFORMATION:**



### I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Information on the general background of the Ohio program submission, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Ohio program, can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 935.11, 935.12, 935.15 and 935.16.

### II. Submission of Amendment

By letter dated May 24, 1988 (Administrative Record No. OH–1033), Ohio submitted Program Amendment Number 34 to modify the following rules of Chapter 1501 of the Ohio Administrative Code (OAC): 13–1–02, 13–4–03, 13–4–04, 13–4–05, 13–4–13, 13–4–14, 13–7–03, 13–7–04, 13–7–05, 13–9–04, 13–9–07, 13–9–09, 13–9–14, 13–9–15, 13–10–01, 13–14–02 and 13–14–05.

The proposed changes to OAC 1501:13–9–09 and 1501:13–9–15(F)(5)(f) and (g) satisfy requirements placed on Ohio by the Director in his approval of Program Amendment Number 25 on July 17, 1987 (52 FR 26959), as codified at 30 CFR 935.16(e) and (h). However, as Ohio notes in its letter of transmittal, most of the revisions remove or modify provisions which are more stringent than or otherwise differ from the corresponding Federal requirements. Other changes respond to recently published Federal regulatory revisions or address State operational concerns.

OSMRE announced receipt of the proposed amendments in the June 16, 1988, **Federal Register** (53 FR 22503), and, in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments.

### III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.17, are the Director's findings concerning the proposed amendment. Only those revisions of particular interest are discussed below. Any revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions which are not discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment, or concern program provisions for which there is no Federal counterpart and which do not adversely affect other aspects of the program.

*1. OAC 1501:13-1-02 Definitions*

(a) Excess Spoil

Ohio proposes to revise the definition of "excess spoil" in paragraph (MM) of this rule to reflect the transfer of provisions governing the blending of spoil from OAC 1501-15-9-07(C) to OAC 1501:13-9-14(E). Since this change is nonsubstantive in nature, the Director finds that the revised rule is no less effective than the corresponding Federal definition in 30 CFR 701.5.

(b) Previously Mined Area

Ohio proposes to revise the definition of "previously mined area" in paragraph (HHHH) of this rule by changing the reference date from April 10, 1972, to August 3, 1977. The revised definition states that "previously mined area means land disturbed or affected by earlier coal mining operations that was not reclaimed in accordance with the requirements of Chapter 1513 of the Revised Code, as effective August 3, 1977 and thereafter." The corresponding Federal rule at 30 CFR 701.5, as revised on May 8, 1987, (52 FR 17526) defines this term as meaning "land previously mined on which there were no surface coal mining operations subject to the standards of [SMCRA]." The State definition is based solely on whether lands were properly reclaimed; unlike the Federal definition, it does not distinguish between lands that were subject to regulation and those that were exempt. Therefore, the State definition would include a greater number of sites than would the Federal rule, a situation on which the proposed change of dates has no effect.

The Ohio definition closely resembles an earlier version of the Federal rule, which the U.S. District Court for the District of Columbia struck down as being inconsistent with SMCRA because it allowed less than complete highwall elimination in areas mined after SMCRA's reclamation standards took effect (*In re: Permanent Surface Mining Regulation Litigation II, Civil Action 79-1144*, July 15, 1985). Since the Ohio definition is similarly used to determine when an operation is eligible for the lesser reclamation standards of OAC 1501:13-4-12(K) and 13-9-14(L)(3), which include incomplete highwall elimination, the Director finds that the Ohio definition is less effective than the Federal rules and less stringent than SMCRA. Therefore, he is not approving the definition to the extent that includes lands mined after the effective date of SMCRA, except for those lands mined under one of the exemptions provided by SMCRA, and he is requiring that Ohio further amend its definition to remove this inconsistency.

(c) Property To Be Mined

Ohio proposes to revise the definition of "property to be mined" in paragraph (MMMM) of this rule to clarify that, with respect to mineral estates, it includes only those estates to be mined. Surface estates would have to be identified for all lands within the proposed permit area or overlying the proposed underground workings. The corresponding Federal definition in 30 CFR 701.5 lacks this distinction. Furthermore, the preamble to the Federal definition states that "other mineral estates which could be affected must be included" (48 FR 44352, September 28, 1983) so that the regulatory authority can take this into consideration during the permit application review process.

The revised Ohio definition is no less effective than the Federal rule with respect to areas overlying proposed underground workings because the only mineral estates removed or altered in nature or composition would be those being mined. However, it could be less effective than the Federal rule with respect to surface mines (and, possibly, the face-up areas of underground mines) because the excavation involved in such operations may well have a significant adverse effect on other mineral estates. Accordingly, the Director is requiring that Ohio further amend this definition to include all mineral estates which may be affected by the surface excavation associated with coal mining operations.

(d) Support Facilities

On June 9, 1988, pursuant to the decision of the U.S. Court of Appeals for the District of Columbia in *National Wildlife Federation* v. *Hodel* (Case No. 84-5743, January 29, 1988), which upheld inclusion of a geographic proximity element within the definition of "support facilities," OSMRE reinstated the definition of this term in 30 CFR 701.5 (53 FR 21764). As approved on July 17, 1987, the corresponding Ohio definition did not include a proximity element. In this amendment, Ohio proposes to add a sentence to its definition of "support facility" in paragraph (PPPPP) to clarify that "resulting from or incident to" connotes an element of proximity. Since the revised State definition is virtually identical to the corresponding Federal definition, the Director finds that it is no less effective than the Federal rule.

(e) Valid Existing Rights

Ohio proposes to revise the definition of "valid existing rights" (VER) in paragraph (FFFFFF) of this rule to add a provision recognizing continually created VER. When real estate becomes subject to any of the statutory prohibitions or limitations on mining after August 3, 1977, VER will be determined to exist if, on the date the protection comes into existence, a validly authorized coal mining operation exists on or is approved for that site. Since this provision is substantively identical to paragraph (d)(1) of the corresponding Federal definition in 30 CFR 761.5, the Director finds that it is no less effective than that Federal rule.

*2. OAC 1501:13-4-03 Permit Applications; Requirements for Legal, Financial, Compliance, and Related Information*

Paragraph (A)(3)(a) of this rule is being revised to clarify that underground mining applications must identify the owners of all property, not just of the coal. This changes renders the State rule substantively identical to the corresponding Federal rule at 30 CFR 778.13(e) with respect to underground mines. Therefore, the Director finds that this revision renders the State rule no less effective than the Federal rule.

*3. OAC 1501:13-4-04 Permit Application Requirements for Information on Environmental Resources*

(a) Baseline Hydrologic Information

Ohio is revising paragraph (D)(4)(d) of this rule to delete the requirement for baseline information on the sulfate and suspended solids content of the groundwater, and to provide that groundwater need not be analyzed for total dissolved solids if specific conductance is measured. Similarly, Ohio is revising paragraph (E)(2) of this rule to delete the requirement for baseline information on the sulfate content of surface water and to provide the operator the choice of measuring either the specific conductance or the total dissolved solids content of surface waters. Since the corresponding Federal rules at 30 CFR 780.21(b)(1) and (2) are substantively identical to the revised State rules with respect to these parameters, the Director finds that these revisions do not render the State rules less effective than their Federal counterparts.

(b) Fish and Wildlife Studies

Paragraph (J), which concerned fish and wildlife studies, is being deleted and its contents revised and transferred to OAC 1501:13-4-05(P). The comparable Federal rule at 30 CFR 779.20 was similarly removed and its

contents revised and transferred to 30 CFR 780.16 on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the deletion of former paragraph (J) does not render the Ohio rule less effective than the Federal regulations.

*4. OAC 1501:13–4–05 Permit Application Requirements for Reclamation and Operations Plans*

(a) PHC Determinations

The requirement in paragraph (E)(2)(a) of this rule that the determination of probable hydrologic consequences ("PHC determination") include an analysis of the effect of the proposed mining on the total sulfate content of surface and ground waters is being deleted. Since this analysis is not required under 30 CFR 780.21(f)(3)(iv), the Director finds that this deletion will not render the Ohio rule less effective than the cited Federal counterpart.

(b) MSHA Impoundment Plans

If the proposed operation includes any structure for which the applicant is required to submit plans to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216, paragraph (H)(1)(d) of this State rule currently requires that such plans also be included in the permit application submitted to the Chief. Ohio is now revising this rule by deleting this paragraph and transferring its contents in revised form to paragraph (H)(2)(b). This transfer means that the requirement to submit MSHA plans to the Chief will now apply only to proposed impoundments. Since the corresponding Federal rule at 30 CFR 780.25(c)(2) is similarly limited in applicability, the Director finds that this change will not render the State rule less effective than its Federal counterpart.

In addition, Ohio is replacing its reiteration of the information requirements of 30 CFR 77.216–2(a), formerly located in now-deleted paragraphs (H)(2)(b) (i) through (xviii) of the State rule, with a general requirement in paragraph (H)(2)(b) that the application contain all the information required under 30 CFR 77.216–2(a). Since this change is nonsubstantive in nature, the Director finds that the revised State rule is no less effective than its Federal counterpart in 30 CFR 780.25(c)(2), which contains similar provisions.

(c) Air Pollution Control Plans

Paragraph (O) of this rule is being revised to clarify that air pollution control plans submitted with permit applications need only address fugitive dust resulting from erosion. The corresponding Federal rule at 30 CFR 780.15(b) lacks this limiting language. However, in specifying that the plan for fugitive dust control practices shall be as required under 30 CFR 816.95, the Federal rule has the same meaning as the revised State rule since 30 CFR 816.95 concerns only air pollution attendant to erosion. Therefore, the Director finds that the revised State rule is no less effective than 30 CFR 780.15.

(d) Fish and Wildlife Application Requirements

Revised paragraph (P), which consolidates program requirements concerning the fish and wildlife resource information and protection and enhancement plans required of permit applicants, contains provisions identical to those of the corresponding Federal regulation at 30 CFR 780.16, as published on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the revised rule is no less effective than its Federal counterpart.

*5. OAC 1501:13–4–13 Underground Mining Permit Application Requirements for Information on Environmental Resources*

(a) Sulfur Analyses

Ohio is revising paragraphs (C)(2)(c)(v) and (C)(2)(d)(iii) of this rule to delete the requirement that the coal seam be analyzed to determine the amount of sulfur present in the form of marcasite. Language is also being added to grant the Chief the authority to waive the requirement for analysis of the amount of sulfur present in pyritic form. Like the corresponding Federal rules at 30 CFR 784.22(b)(iii) and (b)(3)(iii), the State rules continue to require an analysis of the total sulfur content of the coal seam in all cases. Since the revised State rules are substantively identical to their Federal counterparts, the Director finds that they are no less effective than those rules.

(b) Baseline Hydrologic Information

Ohio is revising paragraph (D)(4)(d) of this rule to delete the requirement for baseline information on the sulfate and suspended solids content of groundwater, and to provide that groundwater need not be analyzed for total dissolved solids if specific conductance is measured. Similarly, Ohio is revising paragraph (E)(2)(b) of this rule to delete the requirement for baseline information on the sulfate content of surface waters and to provide the operator the choice of measuring either specific conductance or the total dissolved solids content of surface waters. Since the corresponding Federal rules at 30 CFR 784.14(b) (1) and (2) are substantively identical to the revised State rules with respect to these parameters, the Director finds that these revisions do not render the State rules less effective than their Federal counterparts.

(c) Fish and Wildlife Studies

Paragraph (J), which concerned fish and wildlife studies, is being deleted and its contents revised and transferred to OAC 1501:13–4–14(R). The comparable Federal rule at 30 CFR 783.20 was similarly removed and its contents revised and transferred to 30 CFR 784.21 on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the deletion of former paragraph (J) does not render the Ohio rules less effective than the Federal regulations.

*6. OAC 1501:13–4–14 Underground Mining Permit Application Requirements for Reclamation and Operations Plans*

(a) Groundwater Recharge Capacity

Ohio is revising this rule by deleting former paragraph (E)(1)(f), which required that the application's plan for the protection of the hydrologic balance describe how the approximate groundwater recharge capacity of the proposed permit area would be restored. By notice published in the December 2, 1987, **Federal Register**, OSMRE removed comparable language in 30 CFR 784.14(g) for the reasons discussed in the preamble to that notice. Therefore, the Director finds that the deletion of former paragraph (E)(1)(f) will not render the Ohio rule less effective that the corresponding Federal regulation.

(b) PHC Determinations

Ohio is deleting the requirement in paragraph (E)(2)(a) of this rule that the determination of probable hydrologic consequences include an analysis of the effect of the proposed mining on the total sulfate content of surface and ground waters. Since this analysis is not required under 30 CFR 784.14(e)(3)(iii), the Director finds that this deletion will not render the Ohio rule less effective than the cited Federal counterpart.

(c) MSHA Impoundment Plans

If the proposed operation includes any structure for which the applicant is required to submit plans to the District Manager of the Mine Safety and Health Administration (MSHA) under 30 CFR 77.216, paragraph (H)(1)(d) of this State rule currently requires that such plans also be included in the permit application submitted to the Chief. Ohio

is now revising this rule by deleting this paragraph and transferring its contents in revised form to paragraph (H)(2)(b). This transfer means that the requirement to submit MSHA plans to the Chief will now apply only to proposed impoundments. Since the corresponding Federal rule at 30 CFR 784.16(c)(2) is similarly limited in applicability, the Director finds that this change will not render the State rule less effective than its Federal counterpart. In addition, Ohio is replacing its reiteration of the information requirements of 30 CFR 77.216–2(a), formerly located in now-deleted paragraphs (H)(2)(b)(i) through (xviii) of the State rule, with a general requirement in paragraph (H)(2)(b) that the application contain all the information required under 30 CFR 77.216–2(a). Since this change is nonsubstantive in nature, the Director finds that the revised State rule is no less effective than its Federal counterpart in 30 CFR 784.16(c)(2), which contains similar provisions.

(d) Subsidence Control Plans

Ohio is revising paragraph (M)(2)(b) of this rule to require that the map of workings included in subsidence control plans indicate the areas where measures will be taken to correct subsidence-related material damage, where appropriate, as does the corresponding Federal rule at 30 CFR 784.20(b). However, in making this change, Ohio inadvertently included an erroneous cross-reference to paragraph (M)(2)(e). The Director understands that the State is now preparing further revisions to this rule and that the reference will be corrected in that process. In the interim, he finds that the context in which the cross-reference is used clearly indicates that the rule intended to reference the measures listed in paragraph (M)(2)(d); he is approving the amendment with the stipulation that the rule be so interpreted.

In addition, the introduction to paragraph (M)(2) has been slightly revised to clarify, in keeping with similar revisions to the corresponding Federal rule at 30 CFR 784.20, that subsidence control plans are required only where a survey shows that structures or renewable resource lands exist and that subsidence could cause material damage to or diminution of the value of foreseeable use of such lands or structures.

Therefore, with the stipulation noted in the first paragraph above, the Director finds that these revisions of the State rule will not render it less effective than its Federal counterpart at 30 CFR 784.20.

(e) Air Pollution Control Plans

Paragraph (Q) of this rule is being revised to clarify that air pollution control plans submitted with permit applications need only address fugitive dust resulting from erosion. The corresponding Federal rule at 30 CFR 784.26 lacks this limiting language. However, in specifying that the plan for fugitive dust control practices shall be as required under 30 CFR 817.95, the Federal rule has the same meaning as the revised State rule since 30 CFR 817.95 concerns only air pollution attendant to erosion. Therefore, the Director finds that the revised State rule is not less effective than 30 CFR 784.26.

(f) Fish and Wildlife Application Requirements

Revised paragraph (R), which consolidates program requirements concerning the fish and wildlife resource information and protection and enhancement plans required of permit applicants, contains provisions identical to the corresponding Federal regulation at 30 CFR 784.21 as published on December 11, 1987 (52 FR 47359). Therefore, the Director finds that the revised rule is no less effective than its Federal counterpart.

*7. OAC 1501:13–7–03 Form, Conditions, and Terms of Performance Bonds*

Ohio is revising paragraph (B)(7) to delete former subparagraphs (d), which prohibited the Chief from accepting any individual letter of credit in excess of 10 percent of a bank's capital surplus account, and (e), which prohibited the Chief from accepting a letter of credit if the sum of such letter of credit and all other letters of credit issued by the bank to the operator exceeded 30 percent of the bank's capital surplus account. Since the corresponding Federal rule at 30 CFR 800.21(b) imposes no similar or related restrictions on letters of credit posted as bond, the Director finds that the deletion of these restrictions will not render the State rule less effective than its Federal counterpart.

*8. OAC 1501:13–7–04 Self-Bonding*

Ohio is revising paragraphs (B)(3)(b), (B)(3) (c) and (D) of this rule to adopt self-bonding eligibility criteria identical to those set forth in 30 CFR 800.23(b)(3)(ii), (b)(3)(iii) and (d). Ohio will now recognize an applicant's total fixed assets within the entire United States, rather than just within Ohio. Also, the required minimum current assets to current liabilities ratio has been reduced from 1.5 to 1.2. Since the revised State requirements are identical to their Federal counterparts, the Director finds that the revised State rules are no less effective than the cited Federal rules.

*9. OAC 1501:13–7–05 Procedures, Criteria, and Schedule for Release of Performance Bond*

Paragraph (A)(2)(b)(iv) is being revised to delete the requirement that requests for approval of Phase II reclamation on cropland other than prime farmland include crop yield data. Since the corresponding Federal rule at 30 CFR 800.40(c)(2) requires actual yield data only for prime farmland, the Director finds that the revised State rule is no less effective than the Federal rule in this respect.

*10. OAC 1501:13–9–04 Protection of the Hydrologic System*

(a) Precipitation Event Design Standards for Diversions and Spillways

Paragraphs (F)(2)(c), (F)(3)(c), (G)(3)(b)(i) and (ii), (H)(2)(h) and (H)(3)(b) of this rule are being revised to adopt precipitation event design standards identical, respectively, to those of 30 CFR 816.43 (b)(3) and (c)(3), 816.46(c)(2)(ii), former 816.49(b)(7), and former 816.49(c)(2) and their counterparts in 30 CFR Part 817. In general, Ohio is replacing 24-hour precipitation event design standards with 6-hour event requirements. While OSMRE has recently (53 FR 43584, October 27, 1988) removed the impoundment spillway design standards previously found in 30 CFR 816.49 (b)(7) and (c)(2) and 817.49 (b)(7) and (c)(2), Ohio is not required to do so as section 505(b) of SMCRA allows States to retain more stringent standards if they so desire. Since the new State standards are identical to or more stringent than their Federal counterparts, the Director finds that these revisions will not render the State rules less effective than the corresponding Federal rules.

(b) Foundation Testing for Impoundments

Ohio is revising paragraph (H)(1)(e)(i) of this rule to clarify that foundation investigations and laboratory testing to determine the design requirements for foundation stability are mandatory only where the proposed impoundment meets or exceeds the size or other criteria of 30 CFR 77.216(a). As promulgated on September 26, 1983, 48 FR 44004, the corresponding Federal rules at 30 CFR 816.49(a)(5)(i) and 817.49(a)(5)(i) extended this requirement to all impoundments regardless of size. However, on November 20, 1986, 51 FR 41991, OSMRE suspended these rules insofar as they applied to impoundments

smaller than a specified size. On October 27, 1988, 53 FR 43584, OSMRE promulgated a revised version of these rules mandating such investigations and testing only for proposed impoundments meeting the criteria of 30 CFR 77.216(a). Since the revised State rule is substantively identical to its revised Federal counterparts, the Director finds that it is no less effective than those Federal rules.

(c) Water Monitoring

Ohio is revising paragraph (N)(2)(a) of this rule to require quarterly rather than monthly monitoring of pond discharges. In addition, paragraphs (N)(1)(c), (N)(2)(a)(iii) and (N)(2)(b)(iii) are being revised to require that surface and ground water monitoring reports be submitted within two weeks following the close of the quarter, rather than two weeks after sample collection or 15 days after the end of the month as previously required. The corresponding Federal rules at 30 CFR 780.21 (i) and (j), 784.14 (h) and (i), 816.41 (c)(2) and (e)(2), and 817.41 (c)(2) and (e)(2) specify that, at a minimum, monitoring shall be conducted on a quarterly basis and that reports shall be submitted every three months. Since the revised Ohio rules retain these minimum requirements, the Director finds that they are no less effective than the cited Federal rules in this respect.

11. OAC 1501:13–9–07 Disposal of Excess Spoil

Ohio is revising this rule by replacing former paragraph (B), which specified that any area disturbed by the disposal of spoil is considered a disturbed area, with a new paragraph (B), which establishes design certification requirements for excess spoil fills. The Director finds that this revision does not render the State rule less effective than any Federal requirement since the definition of "disturbed area" at OAC 1501:13–1–02(FF) already includes all areas upon which spoil is placed or topsoil or vegetation is removed. The new design certification requirements are identical to and therefore no less effective than those set forth in the corresponding Federal rules at 30 CFR 816.71(b)(1) and 817.71(b)(1).

Ohio is also transferring the contents of former paragraph (C), which concerns the blending of spoil during backfilling and grading, to OAC 1501:13–9–14(E), a nonsubstantive change discussed in Findings 1(a) and 13 of this notice, and otherwise revising the language and organization of this rule to more closely resemble the corresponding Federal rules at 30 CFR 816.71 through 816.74 and 817.71 through 817.74. Among these changes is a revision to paragraph (L)(6), which establishes requirements for surface water diversions appurtenant to durable rock fills, replacing the 24-hour precipitation event design standard with the 6-hour event design standard contained in the corresponding Federal rules at 30 CFR 816.73(f) and 817.73(f). For the reasons discussed above, the Director finds that these revisions will not render the State rule less effective than its Federal counterparts.

*12. OAC 1501:13–9–09 Disposal of Coal Mine Wastes and Noncoal Mine Wastes*

(a) Compaction Requirements

Ohio is revising this rule by deleting the provisions, previously found in paragraph (A)(5) of this rule, requiring that coal mine waste be placed in lifts no thicker than two feet and that it be compacted to attain 90 percent of its maximum dry density. On June 9, 1988, 53 FR 21764, OSMRE deleted comparable requirements from the corresponding Federal rules at 320 CFR 816.81(c)(2), 816.83, 817.81(c)(2) and 817.83.

Therefore, the Director finds that deletion of these requirements will not render the State rule less effective than its Federal counterparts.

(b) Design Standards for Spillways and Diversions

Ohio is also revising paragraphs (B)(1)(b), (C)(2)(b) and (C)(4) of this rule by replacing the 24-hour precipitation event design standard for diversions and spillways with the 6-hour event design standard found in the corresponding Federal rules at 30 CFR 816.83(a)(2), 816.84(b)(2) and 816.84(d) and their identical counterparts in 30 CFR Part 817. Therefore, the Director finds that these revisions will not render the State rule less effective than its Federal counterparts.

(c) Foundation Investigations and Noncoal Mine Waste Disposal

In approving Program Amendment No. 25 on July 17, 1987 (Finding 36, 52 FR 26965), the Director, at 30 CFR 935.16(e), required that Ohio further amend OAC 1501:13–9–09(A)(4) to remove the provision granting the certifying engineer sole authority to determine the levels of investigation and laboratory testing needed for design of the foundations of proposed coal mine waste disposal structures. Ohio has complied with this requirement in this amendment. Therefore, the Director finds that revised OAC 1501:13–9–09(A)(4) is now no less effective than the corresponding Federal rules at 30 CFR 816.81(d) and 817.81(d).

In the same notice and finding, the Director also required that Ohio further amend OAC 1501:13–9–09 (E) to prohibit (1) the disposal of noncoal mine waste in a coal mine waste refuse pile or impounding structure and (2) excavation of a noncoal mine waste disposal site within eight feet of a coal outcrop or coal storage area. Ohio has complied with this requirement in this amendment. Therefore, the Director finds that revised OAC 1501:13–9–09(E) is now no less effective than the corresponding Federal rules at 30 CFR 816.89 and 817.89.

*13. OAC 1501:13–9–14 Backfilling and Grading*

The provisions governing the blending of spoil into the surrounding terrain during backfilling and grading are being transferred to paragraph (E) of this rule from paragraph (C) of OAC 1501:13–9–07. Since the language of these provisions remains unchanged, and since the transfer will not affect their applicability or implementation, the Director finds that this modification is nonsubstantive in nature and that the revised rule is therefore no less effective than its Federal counterparts at 30 CFR 816.102 and 817.102.

*14. OAC 1501:13–9–15 Revegetation*

(a) Revised Exemptions

Paragraph (B) of this rule is being revised to exempt small incidental areas from the program's revegetation requirements if revegetation would conflict with the postmining land use and if no environmental harm would result. While the corresponding Federal regulations at 30 CFR 816.111 and 817.111 do not specifically exempt such areas, they do specify that revegetation must be compatible with the approved postmining land use. If revegetation would conflict with the postmining land use, it would be incompatable with that use and therefore prohibited. Since the amendment limits the exemption to areas where revegetation would conflict with the approved postmining land use, the Director finds the amendment to be consistent with and no less effective than the revegetation requirements of 30 CFR 816.111 and 817.111.

(b) Volunteer Species

Paragraphs (F)(3)(b) and (F)(3)(c) of this rule are being revised to allow non-noxious volunteer species to contribute to the satisfaction of Phase II and III revegetation requirements for land to be developed for industrial, residential or commercial use. The Federal regulations at 30 CFR 816.111 and 817.116 do not specifically address the consideration of

non-noxious volunteer species in the satisfaction of revegetation requirements. However, paragraph (a)(2) of the Federal rule does specify that the standards for success shall include criteria representative of unmined lands in the area being reclaimed. Non-noxious volunteer species may be present in or even characteristic of the natural vegetation of such lands. The Director finds, therefore, that the revisions are consistent with the Federal revegetation rules, provided Ohio limits application of these provisions to volunteer species that are compatible with and contributory to the approved reclamation plan and postmining land use.

(c) Prime Farmland Bond Release Standards

Paragraphs (F)(5)(f) and (F)(5)(g) of this rule are being revised to require that the permittee provide three years of crop yield data prior to the Chief's approval of any Phase II or Phase III bond release for prime farmland. The previous rule required only one year of data for a Phase II bond release. In addition, Ohio is removing the requirement that, for a Phase III release, two of three years to be the last two years of the responsibility period. Ohio also has taken this opportunity to correct an erroneous cross-reference in paragraph (F)(5)(e)(i) of this rule.

The Director finds that the revised requirements are substantively identical to and therefore no less effective than the Federal requirements at 30 CFR 823.15(b)(3). In making this change, Ohio has satisfied the requirement imposed by OSMRE at 30 CFR 935.16(h) (Finding 41, 52 FR 26969, July 17, 1987) that it replace the previous 1-year yield data requirement for approval of a Phase II bond release with a 3-year requirement.

*15. OAC 1501:13–10–01 Roads; Performance Standards*

Ohio is revising paragraph (G)(3)(a) of this rule to replace the 24-hour precipitation event design standard for the drainage control structures of primary roads with a 6-hour event standard identifical to that of 30 CFR 816.151(d)(1) and 817.151(d)(1), as promulgated on November 8, 1988 (53 FR 45190). At the time Ohio submitted this amendment, the corresponding Federal rules were suspended following their remand by the U.S. District Court for the District of Columbia for lack of adequate public notice (*In re: Permanent Surface Mining Regulation Litigation II, supra*). However, States were free to adopt similar provisions if they complied with their own public notice and participation requirements. Since Ohio has done so, and since the revised State and Federal standards are identical with respect to the design standard, the Director finds that the revised State rule is not less effective than the corresponding Federal rules at 30 CFR 816.151(d)(1) and 817.151(d)(1).

*16. OAC 1501:13–14–02 Enforcement*

Ohio is revising this rule to delete former paragraph (C)(5), which required the Chief to file copies of show-cause orders with the Ohio Reclamation Board of Review (RBR). Under the corresponding Federal procedures in 30 CFR 843.13(a)(1), the Director of OSMRE is required to file a copy of such orders with the Office of Hearings and Appeals, which then conducts the hearing, if one is requested, and issues the appropriate decision. However, under the rules, the Chief conducts the hearing and renders the decision. Therefore, there is no need to file copies of show-cause orders with the RBR since it has no jurisdiction in such cases. Accordingly, the Director finds that deletion of this provision will not render the State program inconsistent with any Federal requirements. The revised show-cause procedures remain similar to and no less effective than the corresponding Federal procedures.

*17. OAC 1501:13–14–05 Informal Conferences*

Paragraph (B) of this rule is being revised to specify that informal conferences concerning permit applications shall be held within 60 days following the close of the comment period required by OAC 1501:13–5–01(B)(1), rather than within 90 days of receipt of the request for a conference, as previously required by this rule. The corresponding Federal rule at 30 CFR 773.13(c) specifies that the regulatory authority shall hold an informal conference within a reasonable time following receipt of the request for such a conference. The Director finds that the time period specified in the revised rule is reasonable, since it will allow the State and other parties to receive and analyze all comments submitted and thus address them at the conference. Therefore, he finds the revised rule to be no less effective than its Federal counterpart at 30 CFR 773.13(c).

## IV. Disposition of Comments

*Public Comments*

The public comment period and opportunity to request a public hearing announced in the June 16, 1988, **Federal Register** ended on July 18, 1988. No public comments were received and the scheduled public hearing was not held as no one requested an opportunity to provide testimony.

*Agency Comments*

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Ohio program. The U.S. Soil Conservation Service supported the amendment. The Mine Safety and Health Administration (MSHA) provided the only other comments received. It expressed concern that the State's rules did not fully reflect MSHA requirements for impoundment plans, inspection and release. In response, the Director notes that, while the State and Federal regulations do not reiterate the MSHA rules in their entirety, this lack of reiteration does not mean operators need not comply with these rules. Indeed, with respect to impoundments, both the State and Federal rules specifically incorporate the MSHA rules by reference. Furthermore, should any conflicts arise, section 702 of SMCRA provides that MSHA regulations would take precedence.

## V. Director's Decision

Based on the above findings, the Director is approving Program Amendment Number 34, as submitted by Ohio on May 24, 1988 with the exception of the definition of "previously mined area" at OAC 1501:13–1–02(HHHH), which, as discussed in Finding 1(b), the Director has determined to be inconsistent with SMCRA, the Federal regulations and court decisions concerning those regulations.

The Director is requiring that Ohio further amend its program to correct this inconsistency. In addition, as discussed in Finding 1(c), he is requiring that Ohio further amend its definition of "property to be mined" at OAC 1501:13–1–02(MMMM) to include all mineral estates which would be removed or displaced by surface excavation activities associated with coal mining operations.

The Federal regulations at 30 CFR Part 935 codifying decisions concerning the Ohio program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage states to bring their programs in conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

As explained in Findings 12(c) and 14(c), this amendment satisfies the requirements of 30 CFR 935.16 (e) and

(h) and thus renders the corresponding prior disapprovals (52 FR 26959, July 17, 1987) at 30 CFR 935.12 (a) and (c) moot. Therefore, the Director is revising the Federal rules to remove these requirements and disapprovals.

The Director is also taking this opportunity to correct an error in 30 CFR 935.16(bb), as published on July 17, 1987, and to revise this paragraph to improve clarity and provide additional specificity. As originally published, this paragraph neglected to identify the State rules repealed by Program Amendment Number 25.

*EPA Concurrence*

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with the respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. As discussed in Findings 4(c) and 6(e), Ohio is revising the language of its rules concerning air pollution control plans. However, these changes are nonsubstantive clarifications having no effect upon air quality standards. As required by 30 CFR 732.17(h)(11)(i), the Director solicited EPA's comments on these changes; however, none were received.

*Effect of Director's Decision*

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSMRE for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSMRE. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the Ohio program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Ohio of only such provisions.

**VI. Procedural Determinations**

*National Environmental Policy Act*

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

*Executive Order 12291 and the Regulatory Flexibility Act*

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a regulatory impact analysis and regulatory review by OMB.

The Department of the Interior has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

*Paperwork Reduction Act*

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3507.

Date: December 19, 1988.

**Robert E. Boldt,**

*Deputy Director.*

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

**PART 935—OHIO**

1. The authority citation for Part 935 continues to read as follows:

**Authority:** 30 U.S.C. 1201 *et seq.*

2. In § 935.12, paragraph (c) is removed, and paragraph (a) is revised to read as follows:

**§ 935.12 State regulatory program provisions and amendments disapproved.**

* * * * *

(a) The definition of "previously mined area" at OAC 1501:13–1–02 (HHHH), as submitted to OSMRE on May 24, 1988, is disapproved to the extent that it includes lands mined after the effective date of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*, except for those lands mined under one of the exemptions provided in that law.

* * * * *

3. In § 935.15, paragraph (bb) is revised, and a new paragraph (gg) added to read as follows:

**§ 935.15 Approval of regulatory program amendments.**

* * * * *

(bb) With the exception of those provisions identified in section 935.12 of this part, Program Amendment Number 25, as submitted to OSMRE on May 16, 1986, and revised on December 1, 1986, is approved effective July 17, 1987, provided Ohio promulgates these regulations and enacts these statutory revisions in a form identical to that submitted to OSMRE. The amendment consists of the following modifications to the Ohio program:

(1) Revision of the following rules of Chapter 1501 of the Ohio Administrative Code:

*13–1–01* Effective Date and Applicability.
*13–1–02* Definitions.
*13–1–10* Availability of Records.
*13–3–03* Areas Where Mining is Prohibited or Limited.
*13–3–04* Procedures for Identifying Areas Where Mining is Prohibited or Limited.
*13–3–05* Criteria for Designating Areas Unsuitable for Coal Mining Operations.
*13–3–06* Exploration on Land Designated As Unsuitable for Coal Mining Operations.
*13–3–07* Procedures for Designating Areas Unsuitable for Coal Mining Operations.
*13–4–01* General Contents Requirements for Permit Applications.
*13–4–02* Requirements of Coal Exploration.
*13–4–03* Permit Applications; Requirements for Legal, Financial, Compliance and Related Information.
*13–4–04* Permit Application Requirements for Information on Environmental Resources.
*13–3–05* Permit Application Requirements for Reclamation and Operations Plans.
*13–4–06* Permit Applications, Revisions, and Renewals, and Transfers, Assignments, and Sales of Permit Rights.
*13–4–08* Hydrologic Map and Cross Sections.
*13–4–12* Requirements for Permits for Special Categories of Mining.
*13–4–13* Underground Mining Permit Application Requirements for Information on Environmental Resources.
*13–4–14* Underground Mining Permit Application Requirements for Reclamation and Operations Plans.
*13–5–01* Review, Public Participation, and Approval or Disapproval of Permit Applications and Permit Terms and Conditions.
*13–6–03* Small Operator Assistance Program.
*13–7–01* General Requirements for Bonding of Coal Mining and Reclamation Operations.
*13–7–02* Amount and Duration of Performance Bond.
*13–7–03* Form, Conditions, and Terms of Performance Bonds.
*13–7–04* Self-Bonding.
*13–7–05* Procedures, Criteria, and Schedule for Release of Performance Bond.

13-7-06 Performance Bond Forfeiture Criteria and Procedures.
13-7-07 Liability Insurance.
13-8-01 Coal Exploration; Performance Standards.
13-9-01 Signs and Markers.
13-9-04 Protection of the Hydrologic System.
13-9-06 Use of Explosives.
13-9-08 Protection of Underground Mining.
13-9-09 Disposal of Coal Mine Wastes and Noncoal Mine Wastes.
13-9-10 (formerly 13-14-05) Training, Examination, and Certification of Blasters.
13-9-11 Protection of Fish, Wildlife, and Related Environmental Values.
13-9-13 Contemporaneous Reclamation.
13-9-14 Backfilling and Grading.
13-9-15 Revegetation.
13-10-01 Roads; Performance Standards.
13-13-02 Auger Mining; Additional Performance Standards.
13-13-03 Operations on Prime Farmland.
13-13-04 Mountaintop Removal Mining.
13-13-05 Steep Slope Mining.
13-13-06 Coal Preparation Plants and Support Facilities Not Located at or near the Mine Site or Not within the Permit Area for a Mine.
13-14-01 Inspections.
13-14-02 Enforcement.
13-14-03 Civil Penalties.
13-14-04 Petitions for Award of Costs and Expenses.

(2) Addition of the following rules to Chapter 1501 of the Ohio Administrative Code:

13-1-13 Rule References.
13-7-08 Bond Release Conference.
13-14-05 Informal Conferences.

(3) Deletion of the following rules from Chapter 1501 of the Ohio Administrative Code:

13-1-07 Applicability.
13-3-02 Definitions—Valid Existing Rights.
13-13-08 Dams Constructed of Waste Materials.

(4) Revision of Rule 1513-3-03 of the Ohio Administrative Code to prohibit ex parte contacts between the Reclamation Board of Review and representatives of parties appearing before it.

(5) Revision of Rule 1513-3-08 of the Ohio Administrative Code to prohibit the granting of temporary relief when the relief sought is the issuance of a denied permit application.

(6) Revision of paragraphs (H)(2) and (H)(3) of section 1513.16 of the Ohio Revised Code to delete provisions for automatic approval of bond release applications if the Chief fails to act upon them within specified timeframes.

(7) Revision of paragraph (F) of section 1513.18 of the Ohio Revised Code to delete language allowing the State to delay reclamation of forfeiture sites until all collection efforts have been exhausted.

* * * * *

(gg) With the exception of the provision noted in § 935.12 of this part, the following amendment, as submitted to OSMRE on May 24, 1988, is approved effective December 22, 1988: Program Amendment Number 34, which consists of revisions to the following rules of Chapter 1501 of the Ohio Administrative Code: 13-1-02, 13-4-03, 13-4-04, 13-4-05, 13-4-13, 13-4-14, 13-7-03, 13-7-04, 13-7-05, 13-9-04, 13-9-07, 13-9-09, 13-9-14, 13-9-15, 13-10-01, 13-14-02 and 13-14-05. The revisions affect a number of program areas, including definitions; permit application requirements and informal conference procedures; bonding and bond release requirements; precipitation event design standards; performance standards for excess spoil and mine waste disposal, backfilling and grading, impoundments, water monitoring and revegetation; and enforcement procedures for show-cause orders.

4. In § 935.16, the heading is revised, paragraphs (e) and (h) are removed, and new paragraphs (a) and (b) are added to read as follows:

**§ 935.16 Required regulatory program amendments.**

* * * * *

(a) By September 1, 1989, Ohio shall submit a proposed amendment to OAC 1501:13-1-02(HHHH), the definition of "previously mined area," to exclude all lands on which there existed any surface coal mining operations subject to the standards of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1201 *et seq.*).

(b) By September 1, 1989, Ohio shall submit a proposed amendment to OAC 1501:13-1-02(MMMM), the definition of "property to be mined," or otherwise amend its program to require that permit applications identify all owners of record of mineral estates to be removed or displaced by surface excavation activities during the proposed coal mining operations.

* * * * *

[FR Doc. 88-29394 Filed 12-21-88; 8:45 am]
BILLING CODE 4310-05-M

## VETERANS ADMINISTRATION

### 38 CFR Part 36

### Increase in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

**AGENCY:** Veterans Administration.

**ACTION:** Final regulations.

**SUMMARY:** The VA (Veterans Administration) is increasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also increased. These increases are necessary because previous rates were not competitive enough to induce lenders to make guaranteed or insured home loans without substantial discounts, or to make manufactured home loans. The increase in the interest rates will assure a continuing supply of funds for home mortgages, home improvement and manufactured home loans.

**EFFECTIVE DATE:** December 19, 1988.

**FOR FURTHER INFORMATION CONTACT:** Mr. George D. Moerman, Loan Guaranty Service (264), Department of Veterans Benefits, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-3042).

**SUPPLEMENTARY INFORMATION:** The Administrator is required by section 1812(f), Title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by the VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general increase in interest rates charged on conventional manufactured home loans, and the increase in other short-term and long-term interest rates—have shown that the manufactured home capital markets have become more restrictive. It is now necessary to increase the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans in order to assure an adequate supply of funds from lenders and investors to make these types of VA loans.

The Administrator is also required by section 1803(c), Title 38, United States Code, to establish maximum interest rates for home and condominium loans, including graduated payment mortgage loans, and for loans for home improvement purposes. Recent market indicators—including the rate of discount charged by lenders on VA loans and the general increase in interest rates charged by lenders on conventional loans, have shown that the mortgage money market has become more restrictive. The maximum rates in effect for VA guaranteed home and condominium loans and those for energy conservation and home improvement

purposes have not been sufficiently competitive to induce private sector lenders to make these types of VA guaranteed or insured loans without imposing substantial discounts. To assure a continuing supply of funds for home mortgages through the VA loan guaranty program, it has been determined that an increase in the maximum permissible rates applicable to home and improvement loans is necessary. The increased return to the lender will make VA loans competitive with other available investments and assure a continuing supply of funds for guaranteed and insured mortgages.

**Regulatory Flexibility Act/Executive Order 12291**

For the reasons discussed in the May 7, 1981 **Federal Register** (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of Title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 through 612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. The VA finds that they do not come within the definition of a "major rule" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, the VA and the Department of Housing and Urban Development has been determined to be adequate to satisfy the intent of this Executive Order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive Order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured, and direct home and condominium loans, loans for energy conservation and other home improvement purposes, and loans for manufactured home purposes would create an acute shortage of funds pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119.)

These regulations are adopted under authority granted to the Administrator by sections 210(c), 1803(c)(1), 1811(d)(1), and 1812 (f) and (g) of Title 38, United States Code. The regulations are clearly within that statutory authority and are consistent with congressional intent.

These increases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c), and 36.4503(a), Title 38, Code of Federal Regulations.

**List of Subjects in 38 CFR Part 36**

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

Approved: December 16, 1988.

**Thomas K. Turnage,**

*Administrator.*

38 CFR Part 36, Loan Guaranty, is amended as follows:

## PART 36—[AMENDED]

1. Section 36.4212 is amended by revising paragraphs (a) and (d) to read as follows:

**§ 36.4212 Interest rates and late charges.**

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1812 may not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the Veterans Administration prior to the respective effective date:

(Authority: 38 U.S.C. 1812(f))

(1) Effective December 19, 1988, 13 percent simple interest per annum for a loan which finances the purchase of a manufacturer home unit only.

(2) Effective December 19, 1988, 12 and ½ percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective December 19, 1988, 12 and ½ percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

* * * * *

(d) Refinancing loans for the purpose of an interest rate reduction (38 U.S.C. 1812(a)(1)(f)) may specify an interest rate in excess of the rate specified in paragraph (a) (1), or (2), or (3) of this section provided the interest rate of the refinancing loan is less than the interest rate of the VA loan being refinanced.

(Authority:38 U.S.C. 1812 (f) and (g).)

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

**§ 36.4311 Interest rates.**

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10 and ½ per centum per annum, effective December 19, 1988, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 and ½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1).)

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by the VA which specify an interest rate in excess of 10-¾ per centum per annum, effective December 19, 1988, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10-¾ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1).)

(c) Effective November 1, 1988, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 12 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1).)

* * * * *

3. In § 36.4503, paragraph (a) is revised as follows:

**§ 36.4503 Amount and amortization.**

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to $33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to $27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by the VA shall bear interest at the rate of 10 and ½ percent per annum. Loans solely for the purpose of energy

conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 12 percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A).)

* * * * *

[FR Doc. 88-29324 Filed 12-21-88; 8:45 am]

BILLING CODE 6320-01-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 65

[Docket No. FEMA-6944]

### Changes in Flood Elevation Determinations; Sacramento, CA

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Interim rule.

**SUMMARY:** This rule lists those communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) elevations for new buildings and their contents and for second layer insurance on existing buildings and their contents.

**DATES:** These modified elevations are currently in effect and amend the Flood Insurance Rate Map (FIRM) in effect prior to this determination.

From the date of the second publication of notice of these changes in a prominent local newspaper, any person has ninety (90) days in which he can request through the community that the Administrator, reconsider the changes. These modified elevations may be changed during the 90-day period.

**ADDRESSES:** The modified base (100-year) flood elevation determinations are available for inspection at the office of the Chief Executive Officer of the community, listed in the fifth column of the table. Send comments to that address also.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The numerous changes made in the base (100-year) flood elevations on the FIRM(s) make it administratively infeasible to publish in this notice all of the modified base (100-year) flood elevations contained on the map. However, this rule includes the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection.

Any request for reconsideration must be based on knowledge of changed conditions, or new scientific or technical data.

These modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001 through 4128, and 44 CFR 65.4.

For rating purposes, the revised community number is listed and must be used for all new policies and renewals.

These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

These elevations, together with the floodplain management measures required by 60.3 of the program regulations are the minimum that are required. They should not be construed to mean the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time, enact stricter requirements on its own, or pursuant to policies established by other Federal, State or regional entities.

The changes in the base (100-year) flood elevations listed below are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule if promulgated will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

### List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains.

### PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O.12127.

**§ 65.4 [Amended]**

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State | County | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| California | Sacramento | Unincorporated areas | Dec. 2, 1988; Dec. 9, 1988; *The Sacramento Bee.* | The Honorable Jim Streng, Chairman, Sacramento County Board of Supervisors, 827 Seventh Street, Sacramento, California 95814. | Nov. 18, 1988 | 060262 C |

Issued: December 15, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-29327 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

### 44 CFR Part 65

### Changes in Flood Elevation Determinations; Dade and Orange Counties, FL

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations will be used in calculating flood insurance premium rates for new buildings and their contents and for second layer

coverage on existing buildings and their contents.

**DATES:** The effective dates for these modified base flood elevations are indicated on the following table and amend the Flood Insurance Rate Map(s) (FIRM) in effect for each listed community prior to this date.

**ADDRESSES:** The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed on the following table.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of modified flood elevations for each community listed. These modified elevations have been published in newspaper(s) of local circulation and ninety (90) days have elapsed since that publication. The Administrator, has resolved any appeals resulting from this notification.

Numerous changes made in the base (100-year) flood elevations on the FIRMs for each community make it administratively infeasible to publish in this notice all of the changes contained on the maps. However, this rule includes the address of the Chief Executive Officer of the community, where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234) and are in accordance with the National Flood Insurance Act of 1968, as amended (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448), 42 U.S.C. 4001 through 4128, and 44 CFR Part 65.

For rating purposes, the revised community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management measures required by 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities.

These modified base flood elevations shall be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for second layer coverage on existing buildings and their contents.

The changes in the base flood elevations are in accordance with 44 CFR 65.4.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. This rule provides routine legal notice of technical amendments made to designated special flood hazard areas on the basis of updated information and imposes no new requirements or regulations on participating communities.

**List of Subjects in 44 CFR Part 65**

Flood insurance, Floodplains.

## PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

**§ 65.4 [Amended]**

2. Section 65.4 is amended by adding in alphabetical sequence new entries to the table.

| State | County | Location | Dates and name of newspaper where notice was published | Chief executive officer of community | Effective date of modification | Community No. |
|---|---|---|---|---|---|---|
| Florida | Orange (Docket No. FEMA–6936). | Unincorporated areas | Aug. 18, 1988, Aug. 25, 1988, *The Orlando Sentinel.* | The Honorable Thomas R. Sewell, County Administrator, Orange County, P.O. Box 1393, Orlando, FL 32802–1393. | Aug. 10, 1988 | 120179 |
| Florida | Dade (Docket No. FEMA–6936). | Unincorporated areas | Aug. 18, 1988, Aug. 25, 1988, *Miami News.* | The Honorable Joaquin Avino, County Manager, Dade County, Metro Dade Center, 111 N.W. 1st Street, Suite 2910, Miami, FL 33128–1971. | Aug. 10, 1988 | 125098 |

Issued: December 15, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-29328 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

## 44 CFR Part 67

## Final Flood Elevation Determinations; Georgia, et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Final rule.

**SUMMARY:** Modified base (100-year) flood elevations are finalized for the communities listed below.

These modified elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**EFFECTIVE DATE:** The date of issuance of the Flood Insurance Rate Map (FIRM) showing modified base flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below:

**ADDRESSES:** See table below:

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the **Federal Register** for each community listed.

This final rule is issued in accordance with Section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal the proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been proposed. It does not involve any collection of information for purposes of The Paperwork Reduction Act.

### List of Subjects in 44 CFR Part 67

Flood Insurance, Floodplains.

## PART 67—AMENDED

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community.

The modified base flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

| Source of flooding and location | #Depth in feet above ground. ^Elevation in feet (NGVD). Modified |
|---|---|
| **GEORGIA** | |
| **Bainbridge (city), Decatur County (FEMA Docket No. 6934)** | |
| *Big Slough Tributary:* | |
| About 1400 feet downstream of U.S. Highway 84 | *105 |
| About 0.89 mile upstream of Twin Lakes Drive | *108 |
| **Maps available for inspection** at the City Hall, Building Inspection Department, 1001 South Broad Street, Bainbridge, Georgia. | |
| **LOUISIANA** | |
| **Patterson (town), St. Mary Parish (FEMA Docket No. 6930)** | |
| *Wax Lake East:* | |
| Intersection of Lucia Drive and David Street | ^3 |
| Intersection of Pietro Drive and Bernard Drive | ^3 |
| **Maps available for inspection** at the Town Hall, 203 Park Street, Patterson, Louisiana. | |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. ^Elevation in feet (NGVD). Modified |
|---|---|
| **MINNESOTA** | |
| **Windom (city), Cottonwood County (FEMA Docket No. 6930)** | |
| *Perkins Creek:* | |
| Just downstream of Sixth Avenue | *1354 |
| Just downstream of U.S. Highway 71 | *1359 |
| Just upstream of U.S. Highway 71 | *1364 |
| About 2100 feet upstream of U.S. Highway 71 | *1367 |
| **Maps available for inspection** at the City Hall, 444 Ninth Street, Windom, Minnesota. | |
| **MISSOURI** | |
| **Berkeley (city), St. Louis County (FEMA Docket No. 6934)** | |
| *Coldwater Creek:* | |
| About 1850 feet downstream of Norfolk Southern Railway | *520 |
| About 1350 feet upstream of Norfolk Southern Railway | *521 |
| **Maps available for inspection** at the City of Berkeley, Engineering Department, 6140 North Hanley Street, Berkeley, Missouri. | |
| **NORTH CAROLINA** | |
| **Durham (city), Durham County (FEMA Docket No. 6934)** | |
| *Sandy Creek:* | |
| At mouth | *253 |
| About 1000 feet upstream of Garrett Road | *258 |
| Just upstream of U.S. Highway 15 and 501 | *267 |
| **Maps available for inspection** at the City Hall, Planning and Community Development, 101 City Hall Plaza, Durham, North Carolina. | |
| **Pender County (unincorporated areas) (FEMA Docket No. 6934)** | |
| *Atlantic Ocean/Northeast Cape Fear River:* From the mouth of the Cape Fear River to State Route 210 | *8 |
| *Atlantic Ocean/Futch Creek:* Along Futch Creek from about 6000 feet downstream of SR 1571 to about 2500 feet upstream of SR 1571 | *11 |
| *Island Creek:* | |
| Just upstream of SR 1002 | *8 |
| About 1.3 miles upstream of SR 1002 | *12 |
| **Maps available for inspection** at the County Administration Annex, 300 East Fremont, Burgaw, North Carolina. | |
| **TEXAS** | |
| **Clute (city), Brazoria County (FEMA Docket No. 6929)** | |
| *Gulf of Mexico:* Flooding on Oyster Creek at eastern portion of corporate limits (1,000 feet east of intersection of County Routes 503 and 251) | *10 |
| *Oyster Creek:* | |
| At river mile 10.6 | *10 |
| Approximately 650 feet east of Ash Lake | *10 |
| Approximately 0.5 mile north of point where County Route 226 crosses the eastern corporate limits | *11 |
| Approximately 300 feet north of intersection of Kyle Road and County Route 749 | *13 |
| Approximately 1,000 feet north of County Route 286 along Oyster Creek | *14 |
| At downstream side of County Route 288 | *15 |
| **Maps available for inspection** at the City Hall, 104 East Main, Clute, Texas. | |
| **Richwood (city), Brazoria County (FEMA Docket No. 6929)** | |
| *Oyster Creek:* | |
| At downstream corporate limits | *13 |
| At upstream corporate limits | *15 |

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

| Source of flooding and location | #Depth in feet above ground. *Elevation in feet (NGVD). Modified |
|---|---|
| **Maps available for inspection** at the City Hall, 215 Halbert Street, Richwood, Texas. | |
| **VIRGINIA** | |
| **Smyth County (unincorporated areas) (FEMA Docket No. 6930)** | |
| *Staley Creek:* | |
| At corporate limits | *2,198 |
| Approximately 780 feet upstream from corporate limits | *2,210 |
| **Maps available for inspection** at the Building Inspection Department, Smyth County Courthouse, Main Street, Marion, Virginia. | |

Issued: December 15, 1988.

**Harold T. Duryee,**

*Administrator, Federal Insurance Administration.*

[FR Doc. 88-29329 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 73

**[MM Docket No. 86-201; RM-5003, RM-5529]**

### Radio Broadcasting Services; Walton and Falmouth, KY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document vacates an earlier action in this proceeding substituting Channel 245A for Channel 237A at Falmouth, Kentucky, and modifying the license for Station WIOK at Falmouth accordingly, in response to the request of the licensee of WIOK. The document also dismisses petitions for reconsideration of that action as moot. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 27, 1989.

**FOR FURTHER INFORMATION CONTACT:** Karl A. Kensinger, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Memorandum Opinion and Order MM Docket No. 86-201, adopted December 2, 1988, and released December 13, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. In § 73.202(b), the Table of FM Allotments is amended for Kentucky by removing Channel 245A and adding Channel 237A at Falmouth.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-29369 Filed 12-21-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 87-224; RM-5706 and RM-5888]**

### Radio Broadcasting Services; Perryville, MO, Granite City and Benton, IL

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** This document dismisses, at the request of the petitioner, a petition for rule making proposing the substitution of Channel 292B1 in lieu of Channel 292A at Benton, Illinois and the modification of the license of Station WQRL-FM, Benton, to specify operation on Channel 292B1. In view of the dismissal, this document substitutes Channel 226A in lieu of Channel 294A at Perryville, Missouri, and substitutes Channel 293C1 in lieu of Channel 293C2 at Granite City, Illinois. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 5, 1989.

**FOR FURTHER INFORMATION CONTACT:** Robert Hayne, Mass Media Bureau, (202) 634-6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Report and Order*, MM Docket No. 87-224, adopted November 4, 1988, and released November 21, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments, is amended under Missouri by removing Channel 294A and adding Channel 226A at Perryville.

3. Section 73.202(b), the FM Table of Allotments, is amended under Illinois by removing Channel 293C2 and adding Channel 293C1 at Granite City.

Federal Communications Commission.

**Bradley P. Holmes,**

*Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88-29370 Filed 12-21-88; 8:45 am]

BILLING CODE 6712-01-M

### 47 CFR Part 73

**[MM Docket No. 88-67; RM-6178]**

### Radio Broadcasting Services; Ogdensburg, NY

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Timothy D. Martz, allots Channel 254A to Ogdensburg, New York, as the community's second local FM service. Channel 254A can be allotted to Ogdensburg in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.8 kilometers (3.0 miles) northeast to avoid a short-spacing to Channel 201A, Brockville, Ontario, and to Station CFLY-FM, Kingston, Ontario, Canada.
The coordinates for this allotment are North Latitude 44-42-57 and West Longitude 76-26-50. Canadian concurrence in the allotment has been received since Ogdensburg is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** *Effective:* January 23, 1989. The window period for filing applications will open on January 24, 1989 and close on February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–67, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Ogdensburg, New York is amended by adding Channel 254A.

Federal Commissions Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–29368 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–71; RM–6165]**

## Radio Broadcasting Services; Manchester, OH

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Ohio Kentucky Radio Company, allots Channel 267A to Manchester, Ohio, as the community's first local FM service. Supporting comments were filed by Southern Ohio Christian Broadcasting Company. Channel 267A can be allotted to Manchester in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for this allotment are North Latitude 38–41–18 and West Longitude 83–36–24. With this action, this proceeding is terminated.

**DATES:** *Effective:* January 23, 1989. The window period for filing applications will open on January 24, 1989 and close on February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–71, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Ohio is amended by adding the following entry: Manchester, Channel 267A.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–29364 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–70; RM–6163]**

## Radio Broadcasting Services; Lincoln City, OR

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Matrix Media, Inc., substitutes Channel 244C2 for Channel 244A at Lincoln City, Oregon, and modifies its license for Station KCRF to specify operation on the higher powered channel. Channel 244C2 can be allotted to Lincoln City in compliance with the Commission's minimum distance separation requirements and can be used at Station KCRF's present transmitter site. The coordinates for this allotment are North Latitude 44–52–30 and West Longitude 123–59–03. With this action, this proceeding is terminated.

**EFFECTIVE DATE:** January 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–70, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

**Authority:** 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Lincoln City, Oregon, is revised by removing Channel 244A and adding Channel 244C2.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–29366 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

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**47 CFR Part 73**

**[MM Docket No. 88–68; RM–6187]**

## Radio Broadcasting Services; Riverside, PA

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commission, at the request of Victor A. Michael, Jr., allots Channel 222A to Riverside, Pennsylvania, as the community's first local FM service. Channel 222A can be allotted to Riverside in compliance with the Commission's minimum distance separation requirements with a site restriction of 0.7 kilometers (0.5 miles) west to avoid a short-spacing to Station WMGS, Channel 225B, Wilkes-Barre, Pennsylvania. The coordinates for this allotment are North Latitude 40–57–18 and West Longitude 76–38–16. Canadian

concurrence has been received since Riverside is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

**DATES:** *Effective;* January 23, 1989. The window period for filing applications will open on January 24, 1989, and close on February 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Report and Order, MM Docket No. 88–68, adopted November 8, 1988, and released December 9, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

**List of Subjects in 47 CFR Part 73**

Radio broadcasting.

**PART 73—[AMENDED]**

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

**§ 73.202 [Amended]**

2. Section 73.202(b), the FM Table of Allotments for Pennsylvania is amended by adding the following entry, Riverside, Channel 222A.

Federal Communications Commission.

**Steve Kaminer,**

*Deputy Chief, Policy and Rules Division, Mass Media Bureau.*

[FR Doc. 88–29365 Filed 12–21–88; 8:45 am]

BILLING CODE 6712-01-M

## DEPARTMENT OF DEFENSE

**48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252**

**[Defense Acquisition Circular (DAC) 88–3]**

**Department of Defense, Federal Acquisition Regulation Supplement; Regulatory and Miscellaneous Amendments**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rules and interim rules as indicated.

**SUMMARY:** Defense Acquisition Circular (DAC) 88–3 amends the DoD FAR Supplement (DFARS) with respect to Government Property, no-cost storage agreements; security of Government contractor telecommunications; requirement of competition for award of grants and contracts to colleges and universities for certain purposes; small business and small disadvantaged business concerns; restrictions on employment of personnel (Alaska and Hawaii); rights in technical data, prohibitions; responsibilities of CACOs; value engineering; public relations and advertising costs; foreign selling costs; and an editorial correction. This DAC also includes an information item regarding procurement of mooring and welded shipboard anchor chain.

**EFFECTIVE DATE:** December 15, 1988. Comments must be received on or before January 23, 1989.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles W. Lloyd, Executive Secretary, Defense Acquisition Regulatory Council, ODASD(P)/DARS, OASD(P&L), c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062, telephone (202) 697–7266.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The DoD FAR Supplement is codified in Chapter 2, Title 48 of the Code of Federal Regulations.

The October 1, 1987 revision of the CFR is the most recent edition of that title. It reflects amendments to the 1986 edition of the DoD FAR Supplement made by Defense Acquisition Circulars 86–1 through 86–5. Amendments made by DACs 86–6 through 86–16 were published in the **Federal Register** at 53 FR 38171, September 29, 1988, and will be included in the October 1, 1988 revision of the CFR.

**B. Public Comments**

*DAC 88–3, Item I*

This item is published for information purposes; comments are not necessary.

*DAC 88–3, Item II*

A proposed rule with request for comments were published in the **Federal Register** on May 26, 1988 (53 FR 19006), and comments were considered in preparing this final rule.

*DAC 88–3, Items III through V, VIII, X, and XI*

Public comments were not solicited with respect to these revisions since such revisions do not alter the substantive meaning of any coverage in the DFARS having a significant impact on contractors or offerors, or do not have a significant effect beyond agency internal operating procedures. However, comments from small entities concerning the affected DoD FAR Supplement coverage will be considered. Please cite DAR Case 88–610D.

*DAC 88–3, Item VI*

Comments are invited. Interested parties should submit written comments, to be considered in further rulemaking on this subject, on or before January 23, 1989 to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OUSD(A) (M&RS), Room 3D139, The Pentagon, Washington, DC 20301–3062. Please cite DAR Case 88–300 in all correspondence related to this subject.

*DAC 88–3, Item VII*

Comments are invited. Interested parties should submit written comments to the address shown above on or before January 23, 1989, to be considered in further rulemaking on this subject. Please cite DAR Case 88–305 in all correspondence related to this subject.

*DAC 88–3, Item IX*

A proposed rule was published in the **Federal Register** on March 31, 1988 (53 FR 10409), and comments were solicited, but none were received.

**C. Regulatory Flexibility Act**

*DAC 88–3, Item I*

This item is published for information purposes; comments are not necessary. The Regulatory Flexibility Act does not apply.

*DAC 88–3, Items III, IV, VIII, X, and XI*

These rules do not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

*DAC 88–3, Item II*

This final rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the data required to evaluate status as a small business and the reasonableness of an assertion of inability to acquire the necessary equipment is already required to

determine their status in respect to the Government contract. A Final Regulatory Flexibility Analysis has been performed and submitted to the Chief Counsel for Advocacy for the Small Business Administration. Comments from small entities concerning the affected DFARS Subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

*DAC 88–3, Item V*

This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. This change will impact only those small entities that have been awarded in FY 1989 construction and services contracts calling for performance in whole or in part within the States of Alaska or Hawaii, and then only if the unemployment rate for those states exceeds the national average. The number of small entities that meet this condition is considered to be insignificant in relation to the total number of small entities that do business with the Department of Defense. Comments from small entities concerning the affected DFARS subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite DAR Case 88–610D in correspondence.

*DAC 88–3, Item VI*

This interim rule is not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* because most contracts awarded to small entities are awarded on a competitive fixed-price basis and the cost principles do not apply. An Initial Regulatory Flexibility Act Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS Subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and must cite DAR Case 88–610D in correspondence.

*DAC 88–3, Item VII*

The changes in this interim rule are not expected to have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.)* because any small entities that might be affected by the changes would already be covered by the restrictions of 10 U.S.C. 2320(a)(2)(F), as implemented in the existing DFARS 227.473–2. An Initial Regulatory Flexibility Analysis has therefore not been performed. Comments from small entities concerning the affected DFARS Subpart will also be considered in accordance with section 610 of the Act. Such comments will be submitted separately and must cite DAR Case 88–610D in correspondence.

*DAC 88–3, Item IX*

The Department of Defense certifies that this final rule will not have a significant economic impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* While contractors will now be required to prepare cost/price proposals when storage agreements are contemplated, the number of small businesses that will be impacted is expected to be minimal, particularly in view of the fact that this regulatory change is expected to greatly reduce the number of storage agreements. The proposed rule published in the **Federal Register** on March 31, 1988 (53 FR 10409) invited comments from small entities, but none were received.

**D. Paperwork Reduction Act**

*DAC 88–3, Item I*

This item is published for information purposes. The Paperwork Reduction Act does not apply.

*DAC 88–3, Items II through VIII, X, and XI*

These rules do not contain information collection requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

*DAC 88–3, Item IX*

On November 28, 1988, OMB approved 439,050 burden hours for OMB Control Number 0704–0246. This represents an increase of 3,200 hours as a result of the proposed rule published in the **Federal Register** at 53 FR 10409, dated March 31, 1988, which is herein finalized.

**D. Determination To Issue an Interim Regulation**

*DAC 88–3, Items VI and VII*

A determination has been made under the authority of the Secretary of Defense that the coverage in these items must be issued as an interim regulation to promptly implement sections 826 and 806 respectively of the National Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100–456).

**List of Subjects in 48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252**

Government procurement.

**Charles W. Lloyd,**

*Executive Secretary, Defense Acquisition Regulatory Council.*

[Defense Acquisition Circular No. 88–3]
December 15, 1988.

Unless otherwise specified, all DoD FAR Supplement and other directive material contained in this Defense Acquisition Circular is effective December 15, 1988.

Note: Revisions in this DAC are issued as final rules except the revisions under Items VI and VII which are issued as interim rules.

Defense Acquisition Circular (DAC) 88–3 amends the DoD Federal Acquisition Regulation Supplement (DFARS) 1988 Edition and prescribes procedures to be followed. The following is a summary of the amendments and procedures.

**Item I—Guidance for Procurement of Mooring and Welded Shipboard Anchor Chain**

The DAR Council at its meeting of 30 November 1988 approved the following guidance for procurement of mooring and welded shipboard anchor chain using Fiscal Year 1988 and 1989 appropriated funds.

(a) No Fiscal Year 1989 funds shall be used to procure welded shipboard anchor and mooring chain, four inches in diameter and under, manufactured outside the United States, its territories or possessions.

(b) No Fiscal Year 1988 funds shall be used to procure mooring chain of all types, four inches or less in diameter, if such chain is manufactured outside the United States, its territories or possessions, or Canada. However, when adequate supplies of mooring chain are not available from the United States, its territories or possessions, or Canada, to meet DoD requirements on a timely basis, then this mooring chain may be procured from other countries on a case-by-case basis as determined by the Secretary (or designee) of the service concerned.

**Item II—Security of Government Contractor Telecommunications**

In response to National Communications Security Instruction (NACSI) 6002, "Protection of Government Contractor Telecommunications", and in an effort to improve the communications security posture of Department of Defense (DoD) contractors, DoD issued DoD Directive

5210.74, which requires all DoD components to identify telecommunications security requirements for all contract-related telecommunications, and states that the costs associated with securing contractor telecommunications shall be allowable in the same manner as other security costs. Through new programs sponsored by the NSA, telecommunications security equipment is now available to Government contractors either as Government-Furnished Property (GFP), Contractor-Acquired Property, or plant equipment.

The DAR Council has approved changes to add to the DoD FAR Supplement the requirements for contracting officers to identify telecommunications security requirements, if any, for all DoD contracts, and to ensure the implementation of telecommunications security as necessary and appropriate.

A new Subpart 204.5 and a new clause at 252.204-7008 are added to effect the above-mentioned changes.

**Item III—Requirement of Competition for Award of Grants and Contracts to Colleges and Universities for Certain Purposes**

DFARS 206.302-3(c) is added to implement the statutory prohibition on acquiring research and development and facilities construction from colleges and universities noncompetitively. This restriction applies to contracts entered into after *October 1, 1989.* It does not apply to the exercise of priced options on existing contracts.

**Item IV—Small Business and Small Disadvantaged Business Concerns**

DFARS 19.000(a) (S-70) is revised to extend the objective through Fiscal Year 1990.

**Item V—Restrictions on Employment of Personnel (Alaska and Hawaii)**

DFARS 222.7200 is revised to implement section 8120 of the FY 1989 Defense Appropriations Act with respect to Restrictions on Employment of Personnel in Alaska and Hawaii.

**Item VI—Public Relations and Advertising Costs; Foreign Selling Costs**

Section 826 of the Defense Authorization Act for Fiscal Year 1989 (Pub. L. 100-456) amended section 2324(f) of Title 10, U.S. Code to add a new paragraph (5) which prescribes that "* * * costs to promote the export of products of the United States defense industry * * *" be allowable to the extent that certain specified conditions are met.

In addition to implementing the literal requirements of the statute, the DAR Council has also opted to allow costs associated with those promotional activities which contain significant efforts to promote exports of products of the United States defense industry because they believe that a target-based segregation of promotional costs is administratively impracticable.

DoD has determined that an interim rule is necessary to implement this coverage. Accordingly, DFARS 231.205-1 and 231.205-38 are revised to implement the change to 10 U.S.C. 2324(f). DFARS 225.7304 is also revised to make it compatible with the changes to DFARS Part 231.

Paragraph (b), "Regulations" of section 826 requires that coverage be prescribed within 90 days of enactment. Thus contracts entered into on or subsequent to that date are intended to contain this interim rule. Additionally, paragraph (b) requires that costs of the types referenced in section 826 which are incurred by a Defense contractor or subcontractor be covered by the new rules, presumably whether or not the contract references cost principles containing the revision. Thus the new regulations provide for the substance of the new rule to apply to Defense contracts which predate the effective date of the rule.

**Item VII—Rights in Technical Data; Prohibitions**

DFARS 227.473-2 is revised to add coverage to implement 10 U.S.C. 2305(d)(4), which was amended under section 806, Incentives for Innovation, of the FY 89 DoD Authorization Act, Pub. L. 100-456, on September 29, 1988. The statute limits the Government's authority to require that prospective developers or producers of major systems provide proposals which would enable the Government to use technical data to obtain future competition when acquiring items or components of the weapon system, where the items or components were developed exclusively at private expense.

**Item VIII—Responsibilities of CACOs**

DFARS 242.603 is revised to provide a more comprehensive description of Corporate Administrative Contracting Officer (CACO) functions.

**Item IX—Government Property, No-Cost Storage Agreements**

A memorandum of 25 November 1986 from the Under Secretary of Defense (Acquisition) prohibits use of "no-cost" storage agreements. "No-cost" is misleading as it is obvious there are costs associated with the control and care of stored property. The language proposed at DFARS 245.612-3 requires storage contracts to be separately priced and funded. A proposed rule with request for comments was published in the **Federal Register** on March 31, 1988 (53 FR 10409).

**Item X—Value Engineering**

The Office of Management and Budget published in the **Federal Register** on 3 February 1988 OMB Circular A-131, Value Engineering, dated January 26, 1988. The Circular, addressed to Heads of Executive Departments and Establishments, requires the use of value engineering, as appropriate, by Federal departments and Agencies to identify and reduce nonessential procurement and program costs. As a result of coverage being revised in the FAR to implement OMB Circular A-131, DFARS 248.201(a)(2) is deleted as unnecessary.

**Item XI—Editorial Correction**

DFARS 245.505-14(a)1 (iv), (v), and (vii) are revised to reflect the correct FAR reference instead of a DFARS reference.

**Adoption of Amendments**

Therefore the DoD FAR supplement is amended as set forth below.

1. The authority for 48 CFR Parts 204, 206, 219, 222, 225, 227, 231, 242, 245, 248, and 252 continues to read as follows:

**Authority:** 5 U.S.C. 301, 10 U.S.C. 2202, DoD Directive 5000.35, and DoD FAR Supplement 201.301.

## PART 204—ADMINISTRATIVE MATTERS

2. A new Subpart 204.5, consisting of sections 204.500 through 204.503, is added to read as follows:

**Subpart 204.5—Security of Contractor Telecommunications**

Sec.
204.500 Scope of subpart.
204.501 Definitions.
204.502 Policy.
204.503 Contract clause.

### Subpart 204.5—Security of Contractor Telecommunications

**204.500 Scope of subpart.**

This subpart prescribes requirements for securing telecommunications between Department of Defense agencies and their contractors and subcontractors.

**204.501 Definitions.**

"Securing", as used in this subpart, means the application of Government-approved telecommunications security

equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which the individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media, when employed by Defense agencies, contractors and subcontractors, to transmit

(a) Classified or sensitive information;

(b) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(c) Matters critical to the direct fulfillment of military or intelligence missions.

**204.502 Policy.**

(a) National policy provides the basis for agency regulations concerning the security of Government contractor telecommunications systems.

(b) Technical or requirements organizations initiating purchase requests shall identify to the Contracting Officer:

(1) The nature and extent of information requiring security during telecommunications and the requirement for the contractor to secure telecommunications systems for each contract;

(2) The telecommunications security equipment, devices, techniques, or services with which the contractor's telecommunications security equipment, devices, techniques or services must be interoperable; and

(3) The approved telecommunications security equipment, devices, techniques or services such as found in the National Security Agency's Information Systems Security Products and Services Catalogue.

(c) Contractors and subcontractors shall provide all telecommunications security techniques or services required for performance of Government contracts. Except as provided in paragraph (d) of this section, contractors and subcontractors shall normally provide all required telecommunications security equipment or devices as plant equipment in accordance with Part 45 of the FAR. In some cases, such as for communications security (COMSEC) equipment designated as a Controlled Cryptographic Item (CCI), contractors or subcontractors must also meet ownership eligibility conditions.

(d) The agency head or designee may agree to provide the necessary facilities as Government-Furnished Property or authorize their acquisition as Contractor-Acquired Property if: (1) The Contractor or subcontractor is ineligible to own COMSEC equipment; or (2) the conditions of FAR 45.302–1(a) are met.

**204.503 Contract clause.**

The contracting officer shall insert the clause at 252.204–7008, Telecommunications Security Equipment, Devices, Techniques and Services, in solicitations and contracts when securing telecommunications is required in performance of a contract.

## PART 206—COMPETITION REQUIREMENTS

3. Section 205.302–3 is added to read as follows:

**206.302–3 Industrial mobilization; or engineering, developmental, or research capability.**

(c) *Limitations.* 10 U.S.C. 2361 provides that the Department of Defense may not award a contract to a college or university for the performance of research or development or for the construction of a facility unless the contract is awarded using competitive procedures. For purposes of this restriction, competitive procedures include, but are not limited to, the small purchase procedures in Part 213 and the existing procedures for initiation, use and renewal of Federally Funded Research and Development Contracts, as well as the competitive procedures identified in FAR 6.102.

## PART 219—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

**219.000 [Amended]**

4. Section 219.000 is amended by adding at the end of paragraph (a) (S–70) a new sentence reading: "Section 844 of Pub. L. 100–456 extended the objective through Fiscal Year 1990."

## PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

**222.7200 [Amended]**

5. Section 222.7200(a) is amended by substituting between the words "Pub. L. 98–190," and the word "require" the words "and similar sections in subsequent Defense Appropriations Acts" in lieu of the words "section 9069 of the 1987 Defense Appropriations Act, Pub. L. 99–591, and section 8046 of the 1988 Defense Appropriations Act, Pub. L. 100–202,"; and by removing the word "contract" and the word "for" the words "awarded during FY 1986, FY 1987 and FY 1988 calling".

## PART 225—FOREIGN ACQUISITION

**225.7304 [Amended]**

6. Section 225.7304 is amended by substituting in the first sentence of paragraph (c)(1)(i)(C) between the word "costs" and the word "be" the word "may" in lieu of the words "shall not"; by adding at the end of the first sentence of paragraph (c)(1)(i)(C) following the word "requirements" the words "in accordance with DFARS 231.205–38(c) (S–70)"; and by changing in the second sentence of paragraph (c)(1)(i)(C) between the word "Provided," and the word "when" the capital "T" to a lower-case "t" for the word "that".

## PART 227—PATENTS, DATA, AND COPYRIGHTS

7. Section 227.473–2 is amended by adding paragraph (b)(3) to read as follows:

**227.473–2 Prohibitions.**

* * * * *

(b) * * *

(3) 10 U.S.C. 2305(d)(4) provides that, except where the Government is otherwise entitled to unlimited rights in technical data (see 227.472–3(a)), in solicitations for development or production of major systems, the contracting officer shall not require offers that would enable the Government to competitively reprocure identical items or components of the major system if the item or component was developed exclusively at private expense, unless the contracting officer detemines that:

(i) The original supplier of the item or component will be unable to satisfy program schedule or delivery requirements; or

(ii) Proposals by the original supplier of the item or component to meet mobilization requirements are

insufficient to meet the agency's mobilization needs.

## PART 231—CONTRACT COST PRINCIPLES AND PROCEDURES

8. Section 231.205–1 is added as an interim rule, to read as follows:

**231.205–1 Public relations and advertising costs.**

(f)(2) Costs of shows and other special events, such as conventions and trade shows, lacking a significant effort to promote export sales of products of the U.S. defense industry, including—

(i) Costs of displays, demonstrations, and exhibits;

(ii) Costs of meeting rooms, hospitality suites, and other special facilities used in conjunction with shows and other special events; and

(iii) Salaries and wages of employees engaged in setting up and displaying exhibits, making demonstrations, and providing briefings.

(f)(8) All public relations costs, other than those specified in FAR 31.205–1(e), whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under FAR 31.205–38(c) and DFARS 231.205–38(c) (S–70), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services. Nothing in this paragraph (f)(8) modifies the express unallowability of costs listed in FAR 31.205–1 (f)(3) through (f)(7), or DFARS 231.205–1(f)(2). The purpose of this paragraph (f)(8) is to provide criteria for determining whether costs not specifically identified should be unallowable.

(g) FAR 31.205–1(g) does not apply to the Department of Defense.

9. Section 231.205–38 is revised to read as follows:

**231.205.38 Selling costs.**

(b) Other market planning costs are allowable to the extent that they are reasonable and comply with the provisions of paragraph (c) (S–70) of this section.

(c) (S–70) The costs of broadly-targeted and direct selling efforts and market planning other than long-range, which are incurred in connection with a significant effort to promote export sales of products of the U.S. defense industry, including the costs of exhibiting and demonstrating such products, are allowable on contracts with the Department of Defense provided:

(i) The costs are allocable, reasonable, and otherwise allowable under this Part and Part 31 of the FAR. However, costs normally unallowable under FAR 31.205–1(f)(5) of DFARS 231.205–1(f)(2) (i) and (iii) or 231.205–1(f)(8) are allowable under this paragraph (c) (S–70).

(ii) That, with respect to a business segment which allocates to Department of Defense contracts $2,500,000 or more of such costs in any fiscal year of such business segment, the allowable amount of such costs shall not be in excess of 110% of such costs incurred by such business segment in the previous fiscal year.

(iii) In order to comply with Pub. L. 100–456, the substance of this paragraph (c) (S–70) shall apply to all contracts (and subcontracts) of the contractor with the Department of Defense being performed by the contractor on the first day of the contractor's first full fiscal year that begins on or after the date this paragraph (c) (S–70) became effective, whether or not a contract or subcontract contains this paragraph (c) (S–70). This paragraph (c) (S–70) (iii) is effective until September 28, 1991.

(d) The cost of any selling efforts other than those addressed in FAR 31.205–38(b) or (c) or paragraph (c) (S–70) of this section are unallowable.

(e) Costs of the type identified in FAR 31.205–38(b) or (c) and in paragraphs (c) (S–70) and (d) of this section are often commingled on the contractor's books in the selling expense account because these activities are performed by the sales departments. However, identification and segregation of unallowable costs is required under the provisions of FAR 31.201–6 and FAR 30.405, and such costs are not allowable merely because they are incurred in connection with allowable selling activities.

(f) Additional allowability requirements for FMS contracts are contained in DFARS 225.7304 and 225.7305.

## PART 242—CONTRACT ADMINISTRATION

10. Section 242.603 is revised to read as follows:

**242.603 Responsibilities.**

CACOs perform the CAS functions in FAR 42.302 at the corporate level when a corporate level involvement exists. In ensuring the uniform and consistent treatment of corporate costs charged to the Government by all business segments of the corporation, the CACO should maintain close coordination with business segment ACOs.

## PART 245—GOVERNMENT PROPERTY

**245.505–14 [Amended]**

11. Section 245.505–14 is amended by substituting at the end of paragraphs (a)1 (iv), (a)(v), and (a)(vii) the reference "FAR 45.101" in lieu of the reference "245.101" in all three places.

12. Section 245.612–3 is added to read as follows:

**245.612–3 Special storage at the government's expense.**

(a) Before authorizing retention of items in storage for anticipated future use, the contracting officer shall ensure that sufficient funds are available to pay the storage and any related tasks required of the contractor. The contracting officer shall ensure that retention decisions are reviewed at least annually to determine whether continued storage is appropriate.

(b) All storage contracts shall be fully funded and separately priced to include all allocable costs.

## PART 248—VALUE ENGINEERING

**248.201 [Amended]**

13. Section 248.201 is amended by removing paragraphs (a)(2), (a)(2)(i), and (a)(2)(ii).

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

14. Section 252.204–7008 is added to read as follows:

**252.204–7008 Security of contractor telecommunications.**

As prescribed in 204.503, insert the following clause:

**Telecommunications Security Equipment, Devices, Techniques and Services (Dec. 1988)**

(a) Definitions.

"Securing", as used in this subpart, means the application of Government-approved telecommunications security equipment, devices, techniques, or services to contractor telecommunications systems.

"Sensitive information", as used in this subpart, means any information the loss, misuse, or unauthorized access to or modification of which could adversely affect the national interest or the conduct of Federal programs, or the privacy to which the individuals are entitled under 5 U.S.C. 552a (the Privacy Act), but which has not been specifically authorized under criteria established by an Executive Order or an Act of Congress to be kept secret in the interest of national defense or foreign policy.

"Telecommunications systems", as used in this subpart, means voice, record, and data communications, including management information systems and local data networks that connect to external transmission media,

when employed by Defense agencies, contractors and subcontractors, to transmit

(a) Classified or sensitive information;

(b) Matters involving intelligence activities, cryptologic activities related to national security, the command and control of military forces, or equipment that is an integral part of a weapon or weapons system; or

(c) Matters critical to the direct fulfillment of military or intelligence missions.

(b) This solicitation/contract identifies classified or sensitive information that requires securing during telecommunications and the requirement for the Contractor to secure telecommunication systems. The Contractor agrees to secure information and systems identified in (insert the location in solicitation/contract).

(c) To provide the security, the Contractor shall use Government-approved telecommunications security equipment, devices, techniques or services, as identified in (insert location in solicitation/contract). Equipment, devices, techniques or services used by the Contractor must be compatible or interoperable with (insert location in solicitation/contract listing any telecommunications security equipment, devices, techniques, or service currently being used by the technical or requirements organization or other offices with which the Contractor must communicate).

(d) Except as provided in DFARS 204.502(d), Contractors shall furnish all telecommunications security equipment, devices, techniques or services necessary to perform this contract. Contractors must meet ownership eligibility conditions for COMSEC equipment designated as Controlled Cryptographic Items (CCI).

(e) This clause, including this paragraph (e), shall be included in all subcontracts which require securing telecommunications, suitably modified to reflect the relationship of the parties.

(End of clause)

[FR Doc. 88-29355 Filed 12-21-88; 8 45 am]

BILLING CODE 3810-01-M

# Proposed Rules

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Farmers Home Administration

### 7 CFR Part 1942

### Loan and Grant Programs

**AGENCY:** Farmers Home Administration, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** The Farmers Home Administration (FmHA) proposes to amend the portion of its regulations governing Community Facility loans pertaining to insurance and fidelity bond coverage, to provide additional guidance on defeasance of FmHA loans, and to make various minor corrections. The primary intended effect is to allow greater flexibility for borrowers required to carry insurance and fidelity bond coverage.

**DATE:** Comments must be received on or before January 23, 1989.

**ADDRESSES:** Submit written comments in duplicate to the Office of the Chief, Directives and Forms Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6348, South Agriculture Building, Washington, DC 20250. All written comments made pursuant to this notice will be available for public inspection during regular work hours at the above address. The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Submit comments to the Office of Management and Budget, Office of Information and regulatory Affairs, Attention: Desk Officer for the Farmers Home Administration, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** Richard Kelley, Loan Specialist, Water and Waste Disposal Division, Farmers Home Administration, USDA, South Agriculture Building, Room 6334, Washington, DC 20250, telephone: (202) 382-9589.

**SUPPLEMENTARY INFORMATION:** This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1, which implements Executive Order 12291, and has been determined to be "nonmajor" since the annual effect on the economy is less than $100 million and there will be no significant increase in cost or prices for consumers; individual industries; Federal, State, or Local government agencies; or geographic regions. Furthermore, there will be no adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. This action is not expected to substantially affect budget outlay or to affect more than one agency or to be controversial. The net result is expected to be to provide better service to rural communities.

The Administrator, Farmers Home Administration, USDA, has determined that this action will not have a significant economic impact on a substantial number of small entities because it contains normal business recordkeeping requirements and minimal essential reporting requirements.

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos. 10.418, Water and Waste Disposal Systems for Rural Communities, and 10.423, Community Facilities Loans, and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and Local officials. (7 CFR Part 3015, Subpart V, 48 FR 29112, June 23, 1983, and 7 CFR Part 1940, Subpart J,"Intergovernmental Review of Farmers Home Administration Programs and Activities").

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

### Background

The primary purpose of this package is to modify the provisions of FmHA regulations relating to insurance and fidelity bond coverage for Community Programs borrowers. Additional guidance on defeasance will also be provided. Finally, a number of minor correction-type changes to the regulations may be included. The alternatives are to do nothing or to proceed with revision of the regulation. FmHA believes that making the proposed changes will result in more efficient and equitable conduct of internal Agency administrative activities and provision of service to the public.

The primary changes include the following:

1. Section 1942.17(j)(3)(i)(A) clarifies that insurance requirements are to be based on the FmHA-financed facility.
2. Section 1942.17(j)(3)(i)(C) establishes policy governing the use of deductibles.
3. Section 1942.17(j)(3)(i)(E) clarifies that borrowers may be required to submit evidence of the maximum amount of funds on hand during the year to allow FmHA to determine the adequacy of fidelity bond coverage.
4. Section 1942.17(j)(3)(ii)(A) allows the loan approval official to approve an amount of fidelity bond coverage lower than the normal requirement.
5. Section 1942.17(j)(3)(ii)(B) clarifies that blanket fidelity bond coverage is acceptable, and that other forms of coverage are acceptable if they fulfill essentially the same purpose as a fidelity bond.
6. Section 1942.17(j)(3)(ii)(C) clarifies that for deductibles, the full amount involved must be set aside and restricted for use only for the intended purpose.
7. Section 1942.18(d)(4) is revised to provide current references to guidelines used in designing FmHA-financed health care facilities.
8. Section 1942.19(h)(10)(iii) is revised to further emphasize that defeasance is not authorized in connection with FmHA loans due to conflict with the statutory requirement concerning refinancing.

### List of Subjects in 7 CFR Part 1942

Community development, Community facilities, Loan programs—housing and

community development, Loan security, Rural areas, Waste treatment and disposal—domestic, Water supply—domestic.

Therefore, Chapter XVIII, Title 7, Code of Federal Regulations, is proposed to be amended as follows:

## PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 continues to read as follows:

**Authority:** 7 U.S.C. 1989; 5 U.S.C. 301; 16 U.S.C. 1005; 7 CFR 2.23; 7 CFR 2.70.

### Subpart A—Community Facility Loans

2. Section 1942.17 is amended by revising paragraph (j)(3) to read as follows:

**§ 1942.17 Community facilities.**

* * * * *

(j) * * *

(3) *Insurance and fidelity bonds.* Applicants must provide evidence of adequate insurance and fidelity bond coverage by loan closing or start of construction, whichever occurs first. Such coverage must then be maintained for the life of the loan.

(i) *General.* The requirements below apply to all types of coverage determined necessary:

(A) The purpose of insurance and fidelity bond coverage is to protect the government's financial interest based on the facility financed. For example, fidelity bond coverage for an FmHA-financed water system may be based solely on funds attributable to the water system if such funds are kept separate from funds relating to other operations of the borrower.

(B) Insurance requirements shall normally not exceed those proposed by the applicant/borrower if the proposed coverage is determined by the loan approval or servicing official to be adequate to protect the government's financial interest.

(C) In unusual circumstances the use of a deductible, i.e., an initial amount of each claim to be paid by the policyholder, may be allowed if the applicant/borrower provides evidence acceptable to FmHA that its resources would likely be adequate to cover potential claims requiring payment of the deductible.

(D) Proposed types and amounts of insurance coverage will normally be reviewed by the applicant/borrower's attorney and insurance provider(s). The types and amounts must in all cases be adequate to protect the government's interest based on the type of facility financed and the type of security involved. However, applicants/borrowers are strongly encouraged to maintain adequate insurance for all operations even if not required by FmHA.

(E) Except for the fidelity bond, copies of policies do not have to be maintained in the case file. However, borrowers must furnish evidence to FmHA annually that adequate coverage is in effect. This may consist of a listing of policies and coverage amounts in annual audits, yearend reports, or other documentation. To evaluate the adequacy of fidelity bond coverage, FmHA may require a certification or other evidence of the maximum amount of funds on hand at any time during the previous fiscal year.

(ii) *Fidelity bond.* Applicants/borrowers will provide fidelity bond coverage for all persons entrusted with the receipt and/or disbursement of funds and the custody of valuable property. Coverage may be provided either for all individual positions involved, or through "blanket" coverage providing protection for all appropriate employees and/or officials.

(A) Coverage will normally equal the maximum amount of funds on hand at any time exclusive of funds deposited in a supervised bank account. However, a lesser amount may be approved by the FmHA loan approval official if he or she determines and documents that the coverage is considered adequate to protect the government's financial interest. Such a determination must be based on consideration of the amounts involved; estimated impact a loss would have on the facility or repayment of the loan; positions with and division of responsibility for receipt and/or disbursement of funds and custody of valuable property; internal control procedures which afford protection against losses; the nature of the security for the loan; and operating history.

(B) Form FmHA 440–24, "Position Fidelity Schedule Bond," may be used. Similar forms may be used if determined acceptable to FmHA. Policies or riders covering employee theft and dishonesty are acceptable if it is determined by FmHA that they fulfill essentially the same purpose as a fidelity bond.

(C) If a deductible is approved by FmHA, funds equal to the deductible amount must be set aside and restricted for use only to cover losses requiring payment of the deductible.

(D) FmHA will be named co-obligee if security includes a lien on revenues from the facility financed unless prohibited by State law.

(E) A certified power of attorney with effective date will be attached to each bond.

(iii) *Other types of coverage.* The following types of coverage must be maintained if appropriate for the type of project and entity involved:

(A) *Property insurance.* Fire and extended coverage must be maintained on all above-ground structures when the security for the loan is a lien on such structures or they are needed to produce revenue pledged as security for the loan. An exception may be granted for reservoirs, standpipes, elevated tanks, and other structures built entirely of noncombustible materials if it is determined and documented that such structures are not normally insured and the government's interest will remain adequately protected. If such insurance is required, borrower-owned equipment or machinery located in the insured structures must also be covered. Property insurance on subsurface lift stations is not required except for the value of electrical and pumping equipment therein. If FmHA has a lien on the property, FmHA must normally be listed as mortgagee on the policy.

(B) *Liability and property damage insurance.* Requirements for liability and property damage insurance will be established based on the type of entity involved and the nature of the operation.

(C) *Malpractice insurance.* The need and requirements for malpractice insurance will be carefully and thoroughly considered in connection with each health care facility financed.

(D) *Flood insurance.* Facilities located in special flood- and mudslide-prone areas must comply with the eligibility and insurance requirements of Subpart B of Part 1806 of this chapter (FmHA Instruction 426.2).

(E) *Worker's compensation.* The borrower will carry worker's compensation insurance for employees in accordance with State laws.

* * * * *

3. Section 1942.18 is amended by revising paragraph (d)(4) to read as follows:

**§ 1942.18 Community facilities—planning, bidding, contracting, constructing.**

* * * * *

(d) * * *

(4) *Health Care Facilities.* The proposed facility must meet the minimum standards for design and construction contained in the American Institute of Architects Press Publication No. ISBN 0–913962–96–1, "Guidelines for Construction and Equipment of Hospital and Medical Facilities," 1987 Edition. The facility must also meet the life/safety aspects of the *1985* edition of the National Fire Protection Association

(NFPA) 101 Life Safety Code, or any subsequent code that may be designated by the Secretary of HHS. Under § 1942.17(j)(8)(ii) of this subpart, a statement by the responsible regulatory agency that the facility meets the above standards will be required. Any exceptions must have prior National Office concurrence.

4. Section 1942.19 is amended by revising paragraph (h)(10)(iii) to read as follows:

**§ 1942.19 Information pertaining to preparation of notes or bonds and bond transcript documents for public body applicants.**

* * * * *

(h) * * *

(10) * * *

(iii) Defeasance provisions in loan or bond resolutions. When a bond issue is defeased, a new issue is sold which supersedes the contractual provisions of the prior issue, including the refinancing requirement and any lien on revenues. Since defeasance in effect precludes FmHA from requiring graduation before the final maturity date, it represents a violation of the statutory refinancing requirement.

* * * * *

Dated: November 17, 1988.

Vance L. Clark,

*Administrator, Farmers Home Administration.*

[FR Doc. 88-29318 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-07-M

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## Animal and Plant Health Inspection Service

### 9 CFR Part 54

**[Docket No. 88-199]**

### Animals Destroyed Because of Scrapie

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice of extension of comment period for advance notice of proposed rulemaking.

**SUMMARY:** This document extends the comment period by 60 days, until March 6, 1989, for an advance notice of proposed rulemaking entitled "Animals Destroyed Because of Scrapie." This action will provide interested persons with additional time to prepare comments on the notice of proposed rulemaking.

**DATE:** Writtern comments must be postmarked or received on or before March 6, 1989.

**ADDRESSES:** Send an original and two copies of written comments to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 88-131. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

**FOR FURTHER INFORMATION CONTACT:** Dr. Chester A. Gipson, Senior Staff Veterinarian, Swine, Poultry, and Miscellaneous Diseases Staff, VS, APHIS, USDA, Room 768, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8321.

**SUPPLEMENTARY INFORMATION:** On November 2, 1988, the Animal and Plant Health Inspection Service published in the **Federal Register** (53 FR 44200-44202, Docket Number 88-131) an advance notice of proposed rulemaking to discontinue the Scrapie Eradication program and to remove the regulations concerning animals destroyed because of scrapie (9 CFR Part 54).

The advance notice provided that written comments would be accepted for 60 days until January 3, 1989. We have received a request from industry associations that we extend the comment period for 60 days to provide interested persons with adequate time to prepare comments.

We believe it is in the public interest to extend the comment period. Accordingly, we are extending this comment period for 60 days, until March 6, 1989.

Done in Washington, DC, this 16th day of December 1988.

James W. Glosser,

*Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 88-29320 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-34-M

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## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

### 14 CFR Part 39

**[Docket No. 88-NM-159-AD]**

### Airworthiness Directives; Short Brothers Model SD3-60 Series Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of Proposed Rulemaking (NPRM).

**SUMMARY:** This notice proposes a new airworthiness directive (AD), applicable to Short Brothers Model SD3-60 series airplanes, which would require repetitive inspections of the horizontal stabilizer rear spar web fuselage attachment fitting area for defective rivets, and repair, if necessary. This proposal is prompted by reports of failure of rivets connecting the stabilizer rear spar web to the fuselage attachment fittings due to vibration of the tailplane during takeoff. This condition, if not corrected, could lead to loss of the structural integrity of the attachment of the horizontal stabilizer to the fuselage and reduced life of the tailplane.

**DATE:** Comments must be received no later than February 14, 1989.

**ADDRESSES:** Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Short Brothers PLC, Librarian for Service Bulletins, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

**FOR FURTHER INFORMATION CONTACT:** Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**SUPPLEMENTARY INFORMATION:**

#### Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of

this proposal will be filed in the Rules Docket.

**Availability of NPRM**

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Airworthiness Rules Docket No. 88-NM-159-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

**Discussion**

The United Kingdom Civil Aviation Authority (CAA), in accordance with existing provisions of a bilaterial airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain Short Brothers Model SD3-60 series airplanes. The manufacturer has reported failure of the rivets connecting the horizontal stabilizer rear spar web fuselage attachment fittings due to vibration of the tailplane during takeoff. This condition, if not corrected, could lead to loss of structural integrity of the attachment of the horizontal stabilizer to the fuselage and reduced life of the tailplane.

Short Brothers has issued Service Bulletin SD360-15-16, dated April 1988, which describes procedures for inspecting the horizontal stabilizer for defective rivets, and repair, if necessary. The CAA has classified this service bulletin as mandatory.

Short Brothers has also issued Service Bulletin SD360-55-12 (Modification 7998), Revision 2, dated November 1986, which describes procedures for modification of the horizontal stabilizer spar webs. Accomplishment of this modification terminates the need for the repetitive inspections described above. The CAA did not classify this service bulletin as mandatory.

This airplane model is manufactured in United Kingdom and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require repetitive inspections of the spar webs of the horizontal stabilizer for defective rivets, and repair, if necessary, in accordance with Service Bulletin SD360-15-16. An optional terminating action is provided as modification the horizontal stabilizer spar webs in accordance with Service Bulletin SD360-55-12, Revision 2.

It is estimated that 51 airplanes of U.S. registry would be affected by this AD, that it would take approximately 8 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $16,320.

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, the FAA has determined that this document: (1) Involves a proposed regulation which is not major under Executive Order 12291, and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because of the minimal cost of compliance per airplane ($320). A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

**List of Subjects in 14 CFR Part 39**

Aviation safety, Aircraft.

**The Proposed Amendment**

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

**PART 39—[AMENDED]**

1. The authority citation for Part 39 continues to read as follows:

**Authority:** 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

**§ 39.13 [Amended]**

2. By adding the following new airworthiness directive:

**Short Brothers PLC:** Applies to Model SD3-60 series airplanes, serial numbers SH3601 through SH3691 and SH3694, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent loss of the structural integrity of the horizontal stabilizer attachment to the fuselage, accomplish the following:

A. Visually inspect, in accordance with the schedule listed below, the forward face of the rear spar web and the aft face of the front spar web for defective rivets between fuselage attach fitting at 12.5" left and right of the airplane center line, in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-16, dated April 1988.

1. For airplanes Serial Numbers SH3680 through SH3691 and SH3694, and airplanes affected by this AD which have used only 15° take-off flap setting since before or upon reaching 5,000 flights, inspection is required within the next 100 flights after the effective date of this AD or prior to the total accumulatioin of 12,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,500 flights.

2. For all other airplanes affected by this AD, inspection is required within the next 100 flights after the effective date of this AD or prior to the accumulation of 8,000 flights, whichever occurs later. Repeat the inspection at intervals not to exceed 1,000 flights.

B. If defective rivets are found, prior to further flight, repair in accordance with Part II of Short Brothers Model SD3-60 Service Bulletin SD360-55-16, dated April 1988. After repair, continue the repetitive inspections accordance with paragraph A., above.

C. The repetitive inspections required by paragraphs A. and B., above, may be terminated following completion of the modification of the horizontal stabilizer spar webs (Modification 7998), in accordance with Short Brothers Model SD3-60 Service Bulletin SD360-55-12, Revision 2, dated November 1986.

D. An alternative means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

**Note:** The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Strandardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Short Brothers PLC, Librarian for Service Bulletin, 2011 Crystal Drive, Suite 713, Arlington, Virginia 22202-3702. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certificatcn Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on December 8, 1988.

**Darrell M. Pederson,**

*Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.*

[FR Doc. 88-29312 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

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**14 CFR Part 71**

**[Airspace Docket No. 88-ASO-22]**

## Proposed Revision of Control Zone, Anderson, SC

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to revise the Anderson, South Carolina control zone by changing the hours of operation from part-time to full-time. This proposed change is a result of weather observations now being taken at the Anderson County Airport. This action would also correct the geographic position coordinates of the Anderson County Airport and Correct arrival area extensions based on the Electric City VHF Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Anderson County Radio Beacon (RBN).

**DATE:** Comments must be received on or before January 23, 1989.

**ADDRESSES:** Send comment on the proposal in triplicate to:

Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 88-ASO-22, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

**FOR FURTHER INFORMATION CONTACT:** Melvin Brock, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-ASO-22." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

### Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### The Proposal

The FAA is considering an amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Anderson, South Carolina, control zone by changing the hours of operation from part-time to full-time. This change is a result of weather observations now being taken at the Anderson County Airport. This action would also correct the geographic position coordinates of the Anderson County Airport, and correct arrival area extensions based on the Electric City VORTAC and the Anderson County RBN. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6D dated January 4, 1988.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

### List of Subjects in 14 CFR Part 71

Aviation safety, Control zone.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

## PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

**Authority:** 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

**§ 71.171 [Amended]**

2. Section 71.171 is amended as follows:

**Anderson, South Carolina [Amended]**

By deleting the existing description and adding the following:

Within a 5-mile radius of Anderson County Airport (lat. 34°29'42"N., long. 82°42'33"W.); within 1.5 miles each side of Electric City VORTAC 035° radial, extending from the 5-mile radius zone to 1.5 miles northeast of the VORTAC and within 3 miles each side of the 172° bearing from the Anderson County RBN (lat. 34°29'53"N., long. 82°42'31"W.), extending from the 5-mile radius zone to 8.5 miles south of the RBN.

Issued in East Point, Georgia, on December 9, 1988.

**William D. Wood,**

*Acting Manager, Air Traffic Division, Southern Region.*

[FR Doc. 88-29313 Filed 12-21-88; 8:45 am]

BILLING CODE 4910-13-M

## FEDERAL EMERGENCY MANAGEMENT AGENCY

### 44 CFR Part 67

[Docket No. FEMA-6945]

### Proposed Flood Elevation Determinations; Mississippi et al.

**AGENCY:** Federal Insurance Administration, Federal Emergency Management Agency.

**ACTION:** Proposed rule.

**SUMMARY:** Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program.

**DATES:** The period for comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

**ADDRESS:** See table below.

**FOR FURTHER INFORMATION CONTACT:** Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

**SUPPLEMENTARY INFORMATION:** The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents. Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entitites. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevations prescribe how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirement; of itself it has no economic impact.

### List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

### PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

**Authority:** 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

**Proposed Modified Base Flood Elevations**

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| Mississippi | Unincorporated areas of Rankin County. | Richland Creek | About 2400 feet downstream of State Highway 468. | *316 | *316 |
| | | | About 4400 feet upstream of State Highway 471. | *340 | *338 |
| | | | About 3500 feet upstream of Interstate Highway No. 20. | *373 | *373 |
| Maps available for inspection at the Rankin County Tax Assessor's Office, 401 North Street, Brandon, Mississippi. | | | | | |
| Send comments to The Honorable Ralph Moore, President, Rankin County Board of Supervisors, 110 Timber Street, Brandon, Mississippi 39042. | | | | | |
| New Jersey | Ramsey, Town, Bergen County | Valentine Brook Tributary No. 2. | Upstream of Private Road (approximately 865 feet upstream of South Central Avenue). | *333 | *332 |
| | | | Downstream side of East Main Street | *339 | *340 |
| Maps available for inspection at the Borough Building, 33 North Central Avenue, Ramsey, New Jersey. | | | | | |
| Send comments to The Honorable Emil L. Porfido, Mayor of the Borough of Ramsey, Bergen County, 33 North Central Avenue, Ramsey, New Jersey 07446. | | | | | |
| New York | Oneida, Village, Oneida County | Oneida Creek | Most downstream corporate limits | *429 | *427 |
| | | | Most upstream corporate limits | *453 | *452 |
| Maps available for inspection at 17 W. 2nd Street, Oneida Castle, New York. | | | | | |
| Send comments to The Honorable James Campbell, Mayor of the Village of Oneida Castle, Oneida County, 17 W. 2nd Street, Oneida Castle, New York 13421. | | | | | |
| North Carolina | Unincorporated areas of Surry County. | Stewarts Creek | At confluence with Ararat River | *990 | *985 |
| | | | About 0.8 miles upstream of SR 2000 | *993 | *993 |
| | | Lovills Creek | At mouth | *991 | *991 |
| | | | Just upstream of U.S. Route 52 Bypass | *993 | *991 |
| | | | About 2.1 miles upstream of Independence Boulevard. | *1,051 | *1,051 |
| | | Ararat River | At confluence of Stewarts Creek | *990 | *985 |
| | | | Just upstream of Linville Road | *1,029 | 1,032 |

| State | City/town/county | Source of flooding | Location | #Depth in feet above ground *Elevation in feet (NGVD) | |
|---|---|---|---|---|---|
| | | | | Existing | Modified |
| | | | About 1,100 feet downstream of State Road 104. | *1,087 | *1,088 |
| | | Tumbling Rock Branch | Just upstream of mouth | None | *1,027 |
| | | | Just downstream of Private Road | None | *1,057 |
| | | | Just upstream of Private Road | None | *1,062 |
| | | | Just downstream of Tumbling Rock Lake Dam | None | *1,081 |
| | | | Just upstream of Tumbling Rock Lake Dam | None | *1,102 |
| | | | Just downstream of Westlake Drive | None | *1,121 |
| | | | Just upstream of Westlake Drive | None | *1,135 |
| | | | Just downstream of Boggs Drive | None | *1,178 |
| | | Tumbling Rock Branch | Just upstream of Boggs Drive | None | *1,185 |
| | | | About 920 feet upstream of Boggs Drive | None | *1,191 |

Maps available for inspection at the Planning and Development Office, Courthouse Square, Dobson, North Carolina.

Send comments to The Honorable Sam Couch, Chairman, Surry County Board of Commissioners, P.O. Box 706, Dobson, North Carolina 27017.

| | | | | | |
|---|---|---|---|---|---|
| North Dakota | City of Fargo, Cass County | Red River of the North | Ponded Area located approximately 100 feet South of County Road 6 and approximately 2,200 feet east of 25th Street South. | *904 | *903 |
| | | | Ponded area located immediately South of County Road 6 and approximately 2,600 feet East of 25th Street South. | None | *904 |

Maps are available for review at the City Engineer's office, 306 North Fourth Street, Fargo, North Dakota.

Send comments to The Honorable John G. Lindgren, Mayor, City of Fargo, City Hall, 200 North Third Street, Fargo, North Dakota 58102.

| | | | | | |
|---|---|---|---|---|---|
| Pennsylvania | Morrisville, borough, Bucks County. | Delaware River | Downstream corporate limits | *16 | *20 |
| | | | Approximately 100 feet upstream of U.S. Route 1. | *21 | *22 |

Maps available for inspection at 35 Union Street, Morrisville, Pennsylvania.

Send comments to The Honorable William Thompson, Mayor of the Borough of Morrisville, Bucks County, 35 Union Street, Morrisville, Pennsylvania 19067.

| | | | | | |
|---|---|---|---|---|---|
| Texas | Pearland, city, Brazoria and Harris Counties. | Clear Creek | Approximately .52 mile downstream of downstream corporate limits. | *32 | *31 |
| | | | At upstream corporate limits | *48 | *47 |

Maps available for inspection at the City Hall, Department of Public Works, 3519 Liberty Drive, Pearland, Texas.

Send comments to The Honorable Tom Reid, Mayor of the City of Pearland, Brazoria and Harris Counties, P.O. Box 2068, Pearland, Texas 77588.

| | | | | | |
|---|---|---|---|---|---|
| Virginia | Craigsville, town, Augusta County. | Taylor Hollow | Approximately 70 feet upstream of State Route 42. | *1,540 | *1,541 |
| | | | Approximately 500 feet upstream of upstream corporate limits. | *1,556 | *1,566 |

Maps available for inspection at 6 East Johnson Street, Staunton, Virginia.

Send comments to The Honorable Richard Fox, Mayor of the Town of Craigsville, Augusta County, P.O. Box 237, Craigsville, Virginia 24430.

Harold T. Duryee,

*Administrator, Federal Insurance Administration.*

Issued: December 15, 1988.

[FR Doc. 88-29325 Filed 12-21-88; 8:45 am]

BILLING CODE 6718-03-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 73 and 76

**[Gen. Docket No. 87-24]**

### Program Exclusivity in the Cable and Broadcast Industries

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; Extension of comment period.

**SUMMARY:** Action taken herein extends the time period for filing comments in response to the Further Notice of Proposed Rule Making in Gen. Docket No. 87-24. This Further Notice addresses matters relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase. The extension of time was requested by Southern Broadcast Corporation of Sarasota, Inc., and WMUR-TV, Inc., in a joint filing, and by United Communications Corp.

**DATES:** Comments due January 17, 1989; replies due February 3, 1989.

**ADDRESSES:** Federal Communications Commission, Washington, DC 20554.

**FOR FURTHER INFORMATION CONTACT:** Marcia Glauberman, Mass Media Bureau, (202) 632-6302.

**SUPPLEMENTARY INFORMATION:**

**List of Subjects in 47 CFR Parts 73 and 76**

Broadcast television, Cable television.

**Order Granting Motions For Extension of Time For Filing Comments**

In the matter of amendment of Parts 73 and 76 of the Commission's Rules relating to program exclusivity in the cable and broadcast industries; Gen. Docket No. 87-24.

Adopted: November 30, 1988.

Released: December 2, 1988.

By the Chief, Mass Media Bureau.

1. On October 13, 1988, the Commission adopted a Further Notice of Proposed Rule Making (Further Notice), 3 FCC Rcd 6171, in the above-captioned proceeding. This Further Notice addresses possible changes in a number of rules relating to the ability of television broadcasters to obtain exclusive rights in the programming they purchase *vis-a-vis* cable television

systems carrying distant broadcast signals and against other television broadcast stations. The deadlines for filing comments and reply comments in this proceeding are December 12, 1988, and December 27, 1988, respectively.

2. On November 22, 1988, Southern Broadcast Corporation of Sarasota and WMUR–TV, Inc., filed a joint petition requesting that the time for filing comments in this proceeding be extended to January 26, 1989. On November 29, 1988, United Communications Corp. submitted a motion for extension of time to file comments also asking the Commission to extend the comment deadline to January 26, 1989. Petitioners indicate that more time is needed to collect and evaluate the extensive data sought by the Commission and to respond to the range of issues raised in the Further Notice.

3. As set forth in § 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rule making proceedings shall not be routinely granted. However, we note that the Further Notice raises numerous issues concerning several different program exclusivity rules and therein we specifically state our desire for additional information to develop a comprehensive record before deciding these matters. Thus, it appears reasonable to provide parties with sufficient time to compile the data needed to analyze these issues. However, given our desire to conclude this proceeding as expeditiously as possible, we will grant a more limited extension than that requested by the petitioners. Therefore, we will extend the deadline for filing comments to January 17, 1989, and the deadline for replies to February 3, 1989.

4. Accordingly, *It Is Ordered,* that the joint petition for extension of time filed by Southern Broadcast Corporation of Sarasota and WMUR–TV, Inc., and the motion for extension of time to file comments filed by United Communications Corp. *Are Granted* to the extent specified in paragraph 3, *supra. It Is Further Ordered* that the time for filing comments and reply comments in this proceeding *Are Extended* to January 17, 1989, and February 3, 1989, respectively.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, and 1.45 of the Commission's rules.

6. For further information concerning this proceeding, contact Marcia Glauberman, Policy and Rules Division, Mass Media Bureau, (202) 632–6302.

Federal Communications Commission.

**Alex D. Felker,**

*Chief, Mass Media Bureau.*

[FR Doc. 88–29371 Filed 12–21–88; 8:45 am]

BILLING CODE 6712–01–M

# Notices

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

## DEPARTMENT OF AGRICULTURE

### Forms Under Review by Office of Management and Budget

December 16, 1988.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) title of the information collection; (3) form number(s), if applicable; (4) how often the information is requested; (5) who will be required or asked to report; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to provide the information; (8) an indication of whether section 3504(h) of Pub. L. 96–511 applies; (9) name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Administration Building, Washington, DC 20250, (202) 447–2118.

Comments on any of the items listed should be submitted directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attn: Desk Officer for USDA.

If you anticipate commenting on a submission but find that preparation time will prevent you from doing so promptly, you should advise the OMB Desk Officer of your intent as early as possible.

**Revision**

• *Agricultural Stabilization and Conservation Service*

Reporting Requirements for Unmarketed Tobacco in 7 CFR Parts 724, 725, and 726
MQ–108, MQ–108–1
On occasion; Annually
Farms; 300,000 responses; 20,170 hours; not applicable under section 3504(h)
Sarah Matthews (202) 475–5012

**Extension**

• *Agricultural Cooperative Service*

Compliance Review (Farmer Cooperatives)
ACS–40
On occasion
Businesses or other for-profit; 30 responses; 15 hours; not applicable under section 3504(h)
Charles A. Kraenzle (202) 653–7213

• *Forest Service*

Volunteer Application for Natural Resource Agencies
OF–301
Other; One-time only
Individuals or households; 57,200 responses; 14,100 hours; not applicable under section 3504(h)
Donld T. Hansen (202) 535–0927

• *Agricultural Marketing Service*

Cranberries Grown in the States of MA, RI, CT, NJ, WI, MI, MN, OR, WA, and Long Island in the State of New York, Marketing Order No. 929
None
Recordkeeping; Annually
Businesses or other for-profit; 1,431 responses; 703 hours; not applicable under section 3504(h)
Virginia M. Olson (202) 475–3930

**New Collection**

• *Agricultural Marketing Service*

Marketing Agreement for Proposed Marketing Order for Potatoes Grown in the High Plains of Texas and New Mexico
None
Annually
Farms; 144 responses; 25 hours; not applicable section 3504(h)
Virginia M. Olson (202) 475–3930

**Jane A. Benoit,**

*Departmental Clearance Officer.*

[FR Doc. 88–29319 Filed 12–21–88; 8:45 am]

BILLING CODE 3410–01–M

## Soil Conservation Service

### Pony Creek Watershed, Kansas and Nebraska

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of availability of a record of decision.

**SUMMARY:** James N. Habiger, responsible Federal official for projects administered under the provisions of Pub. L. 83–566, 16 U.S.C. 1001 through 1008, in the State of Kansas, is hereby providing notification that a record of decision to proceed with the installation of the Pony Creek Watershed is available. Single copies of this record of decision may be obtained from James N. Habiger at the address shown below.

**FOR FURTHER INFORMATION CONTACT:** James N. Habiger, State Conservationist, Soil Conservation Service, 760 South Broadway, Salina, Kansas 67401 Telephone 913–823–4565.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Dated: December 12, 1988.

**James N. Habiger,**

*State Conservationist.*

[FR Doc. 88–29377 Filed 12–21–88; 8:45 am]

BILLING CODE 3410–16–M

### Deauthorization of Federal Funding; Moores Creek Watershed, Alabama

**AGENCY:** Soil Conservation Service, USDA.

**ACTION:** Notice of deauthorization of federal funding.

**SUMMARY:** Pursuant to the Watershed Protection and Flood Prevention Act, Pub. L. 83–566, and the Soil Conservation Service Guidelines (7 CFR Part 622), the Soil Conservation Service gives notice of the deauthorization of Federal funding for the Moores Creek Watershed Project, Chambers County, Alabama, effective on November 30, 1988.

**FOR FURTHER INFORMATION CONTACT:** E. V. Todd, State Conservationist, Soil Conservation Service, 665 Opelika Road, Auburn, Alabama 36830, (205) 821–8070.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Date: December 14, 1988.

**Ernest V. Todd,**

*State Conservationist.*

[FR Doc. 88-29448 Filed 12-21-88; 8:45 am]

BILLING CODE 3410-16-M

## CENTRAL INTELLIGENCE AGENCY

### Survivor and Health Insurance Benefit Entitlements Under the Central Intelligence Agency Retirement and Disability System for Certain Former Spouses Divorced Prior to 15 November 1982

Qualified former spouses should respond by 1 April 1989 to the address Listed below.

In accordance with the Intelligence Authorization Act for Fiscal Year 1987 (P.L. 99-569), effective 1 October 1986, certain former spouses who were divorced from Central Intelligence Agency employees, former employees, and retirees prior to 15 November 1982 may be entitled to receive survivor benefits equal to 55 percent of the participant's annuity. The Act also permits such former spouses divorced prior to 7 May 1985 to enroll in the Federal Employees Health Benefits Program (FEHBP) in certain circumstances. Eligibility is based on at least 10 years of marriage to a Central Intelligence Agency Retirement and Disability System (CIARDS) participant during his or her creditable service, at least 5 years of which must have been spent outside the United States together. Certain additional criteria must also be met.

This survivor annuity is financed solely by a special appropriation to the CIARDS fund, and in no way affects the participant's retirement annuity or any entitlements in favor of any other individual (a current spouse, for instance) based upon the participant's annuity.

*The deadline for applying for these benefits is 1 April 1989.* For further information, please write to the following address:

Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Date: December 12, 1988.

**Henry P. Mahoney,**

*Associate Deputy Director for Administration.*

[FR Doc. 88-29321 Filed 12-21-88; 8:45 am]

BILLING CODE 6310-02-M

### New Retirement Benefit Under the Central Intelligence Agency Retirement and Disability System for Certain Former Spouses Divorced After 15 November 1982

Qualified former spouses should respond by 2 June 1990 to the address listed below.

In accordance with the Intelligence Authorization Act for Fiscal Year 1989 (Pub. L. 100-453), certain former spouses who were *divorced after* 15 November 1982 from Central Intelligence Agency employees, former employees, and retirees who *retired before* 15 November 1982 may be eligible to receive a lifetime annuity equal to a pro rata share of 50 percent of the participant's annuity. Eligibility is based on at least 10 years of marriage to a Central Intelligence Agency Retirement and Disability System (CIARDS) participant during his or her creditable service, at least 5 years of which were spent outside the United States together. Certain additional criteria must also be met.

The lifetime annuity is financed solely by a special appropriation to the CIARDS fund, and in no way affects the participant's retirement annuity or any entitlements in favor of any other individual (a current spouse, for instance) based upon the participant's annuity. The effective date of this provision is 2 December 1987.

*The deadline for applying for this benefit is 2 June 1990.* For further information, please write to the following address:

Central Intelligence Agency, Chief, Retirement Division, Post Office Box 1925, Washington, DC 20013.

Date: December 12, 1988.

**Henry P. Mahoney,**

*Associate Deputy Director for Administration.*

[FR Doc. 88-29322 Filed 12-21-88; 8:45 am]

BILLING CODE 6310-02-M

## DEPARTMENT OF COMMERCE

### Foreign-Trade Zones Board

**[Order No. 403]**

### Resolution and Order Approving the Application of the Greater Detroit Foreign-Trade Zone, Inc., for Special-Purpose Subzones at the General Motors Plants in Detroit and Orion Township, MI

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

**Resolution and Order**

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 17, 1987, requesting special-purpose subzone status for two auto manufacturing plants of General Motors Corporation located in Detroit and in Orion Township, Michigan, adjacent to the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

**FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC**

**Grant of Authority To Establish foreign-Trade Subzones at General Motors Plants in the Detroit, Michigan, Area**

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trades Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the

establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed August 17, 1987, FTZ Docket 11–87, 52 FR 32821) in due and proper form to the Board for authority to establish special-purpose subzones at the automobile manufacturing plants of General Motors Corporation (GM) in Detroit (Detroit/Hamtramck Plant) and Orion Township, Michigan;

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore,* in accordance with the application filed August 17, 1987, the Board hereby authorizes the establishment of subzones at two of GM's Detroit area plants, designated on the records of the Board as Foreign-Trade Subzone Nos. 70K (Detroit/Hamtramck Plant) and 70L (Orion Plant) at the locations mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also the following express conditions and limitations:

Activiation of the subzones shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzones in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzones, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In Witness Whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88–29402 Filed 12–21–88; 8:45 am]

BILLING CODE 3510–DS–M

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**[Order No. 404]**

## Resolution and Order Approving the Application of the Greater Detroit Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the General Motors Complex in Lansing, MI

### Resolution and Order

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Detroit Foreign-Trade Zone, Inc., grantee of FTZ 70, filed with the Foreign-Trade Zones Board (the Board) on August 18, 1987, requesting special-purpose subzone status for the automobile manufacturing complex of General Motors Corporation located in Lansing, Michigan, adjacent to the Detroit Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

### FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

### Grant of Authority to Establish a Foreign-Trade Subzone at the General Motors Complex in Lansing, Michigan

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the Greater Detroit Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 70, has made application (filed August 18, 1987, FTZ Docket 12–87, 52 FR 32822) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing complex of General Motors Corporation (GM) in Lansing, Michigan;

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore,* in accordance with the application filed August 18, 1987, the Board hereby authorizes the establishment of a subzone at GM's Lansing, Michigan, complex, designated on the records of the Board as Foreign-Trade Subzone No. 70M at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the

revenue of the United States and the installation of suitable facilities.

*In Witness Whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88-29401 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[Order No. 405]**

## Resolution and Order Approving the Application of the St. Louis County, Port Authority For a Special-Purpose Subzone at the General Motors Plant in Wentzville, MO

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board (the Board) has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the St. Louis County Port Authority, grantee of FTZ 102, filed with the Foreign-Trade Zones Board (the Board) on September 4, 1987, requesting special-purpose subzone status for the auto manufacturing plant of General Motors Corporation located in Wentzville, Missouri, adjacent to the St. Louis Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approves the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

### FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

### Grant of Authority

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdication of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the St. Louis County Port Authority, grantee of Foreign-Trade Zone No. 102, has made application (filed September 4, 1987, FTZ Docket 15-87, 52 FR 34398) in due and proper form to the Board for authority to establish a special-purpose subzone at the automobile manufacturing plant of General Motors Corporation (GM) in Wentzville, Missouri (St. Louis area);

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore,* in accordance with the application filed September 4, 1987, the Board hereby authorizes the establishment of a subzone at GM's Wentzville, Missouri, plant, designated on the records of the Board as Foreign-Trade Subzone No. 102B at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the same extent as though the same were fully set forth herein, and also to the following express conditions and limitations:

Activiation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In Witness Whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88-29400 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[Order No. 402]**

## Resolution and Order Approving the Application of the Greater Cincinnati Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the Storage and Distribution Facilities of U.S. Shoe Corp. in Cincinnati, OH

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

### Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of FTZ 46, filed with the Foreign-Trade Zones Board (the Board) on July 17, 1987, requesting special-purpose subzone status for non-manufacturing operations at the Eastwood Complex of U.S. Shoe Corporation in Cincinnati, Ohio, within the Cincinnati Customs port of entry, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied with regard to that part of the application requesting subzone status for the storage and distribution facilities (24 acres) within the complex, and that this part of the proposal is in the public interest, approves that part of the application.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby

authorized to issue a grant of authority and appropriate Board Order.

## FOREIGN-TRADE ZONES BOARD, WASHINGTON, DC

### Grant of Authority to Establish a Foreign-Trade Subzone at the U.S. Shoe Plant in Cincinnati, Ohio

*Whereas,* by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a through 81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

*Whereas,* the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

*Whereas,* the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 46, has made application (filed July 17, 1987, 52 FR 29714) in due and proper form to the Board for authority to establish a special-purpose subzone at the storage and distribution facilities of U.S. Shoe Corporation at its Eastwood Complex in Cincinnati, Ohio, within the Cincinnati Customs port of entry;

*Whereas,* notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and,

*Whereas,* the Board has found that the requirements of the Act and the Board's regulations are satisfied;

*Now, Therefore,* in accordance with the application filed July 17, 1987, the Board hereby authorizes the establishment of a subzone, at the storage and distribution facilities of U.S. Shoe Corporation in Cincinnati, Ohio, designated on the records of the Board as Foreign-Trade Subzone No. 46E at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, and to the limitations described in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, State, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefore.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

*In Witness Whereof,* the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 14th day of December 1988, pursuant to Order of the Board.

Foreign-Trade Zones Board.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88-29403 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

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**[Order No. 413]**

### Authority for Temporary Time Extension for Subzones 78c and 78D, Tennessee Valley Authority, Hartsville and Phipps Bend, TN

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a through 81u), and the FTZ Board (the Board) Regulations (15 CFR Part 400), the Board adopts the following order:

*Whereas,* FTZ Subzones 78C and 78D at Tennessee Valley Authority's (TVA) nuclear facilities in Hartsville and Phipps Bend, Tennessee, were approved for a five-year period (Board Order 246, 3/30/84) to provide duty deferral on certain unused nuclear power plant equipment stored at the facilities;

*Whereas,* TVA has experienced delays in selling the equipment;

*Whereas,* the Metropolitan Nashville-Davidson County Port Authority, grantee of FTZ 78, has applied to the Board for a time extension to allow TVA to proceed with a proposed sale of the equipment;

*Whereas,* the extension application was accepted for filing on October 25, 1988, and notice inviting public comment was given in the **Federal Register** on October 28, 1988 (FTZ Docket 34-88, 53 FR 43748);

*Whereas,* the U.S. Customs Service and the examiners committee assigned to the case recommend approval;

*Whereas,* the Board has found that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that approval of the application is in the public interest;

*Now, Therefore,* the Board hereby orders:

That the time limits for Subzones 78C and 78D are extended to October 25, 1993, and December 31, 1989, respectively, in accordance with the application filed October 25, 1988. The grant does not include authority for manufacturing operations. The authority given in this Order is subject to settlement locally by the District Director of Customs and the District Army Engineer regarding compliance with their respective requirements relating to foreign-trade zones.

Signed at Washington, DC, this 16th day of December, 1988.

**Jan W. Mares,**

*Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.*

Attest:

**John J. Da Ponte, Jr.,**

*Executive Secretary.*

[FR Doc. 88-29399 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-DS-M

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## International Trade Administration

### Industry Policy Advisory Committee for Trade Policy Matters; Meeting

December 19, 1988.

A meeting of the Industry Policy Advisory Committee for Trade Policy Matters (IPAC) will be held Thursday, January 5, 1989, in Washington, DC, from 9:00 a.m. to 5:00 p.m. The morning session will be held in the Office of the U.S. Trade Representative, Room 203; the afternoon session, in the Indian Treaty Room of the Old Executive Office Building.

The Committee, sponsored by the U.S. Trade Representative and the U.S. Department of Commerce, provides advice to U.S. policymakers with respect

to trade agreements and matters arising in connection with the administration of the trade policy of the United States.

The agenda will be devoted to the Uruguay Round of Multilateral Trade Negotiations being conducted under the auspices of the General Agreement on Tariffs and Trade (GATT), with particular emphasis on the Mid-term Review of the negotiations held in Montreal in early December.

The meeting will be closed to the public in accordance with a Notice of Determination by the United States Trade Representative.

For further information, contact Clare Soponis at (202) 377–3268.

Date: December 19, 1988.

**James P. Moore, Jr.,**

*Assistant Secretary of Trade Development.*

[FR Doc. 88–29396 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-DR-M

## Withdrawal of Applications for Duty-Free Entry of Scientific Instruments

The University of California, Los Alamos has witdrawn the following applications for duty-free entry of streak cameras:

*Docket Numbers:* 86–103, 86–143 and 86–147.

We have discontinued processing of these applications in accordance with § 301.5(g) of 15 CFR Part 301.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–29398 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-DS-M

## Applications for Duty-Free Entry of Scientific Instruments; Vanderbilt University et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the intruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with §§ 301.5(a) (3 and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 1523, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

**Docket Number: 89–009**

*Applicant:* Vanderbilt University, School of Medicine, Department of Pediatrics/Gastroenterology, 1161 21st Avenue S., Nashville, TN 37232.

*Instrument:* Micromanipulator, Model Mk 1.

*Manufacturer:* Singer Instruments, United Kingdom.

*Intended Use:* The Instrument will be used for experiments relating to the identification of intestinal transport proteins involved in phosphate movement. mRNA will be harvested from rat small intestine and injected into xenopus oocytes with the use of the micromanipulator with the aim of identifying the genetic defect in hypophosphatemic animals and humans.

*Application Received by Commissioner of Customs:* October 24, 1988.

**Docket Number: 89–010**

*Applicant:* University of Southern California, Department of Geological Sciences, University Park, Los Angeles, CA 90089–0740.

*Instrument:* Mass Spectrometer, Model PRISM.

*Manufacturer:* VG Isogas, United Kingdom.

*Intended Use:* The instrument will be used to study geological materials (rocks and minerals) that have been collected from the earth's surface. These studies will involve analysis of the isotopic composition of metamorphic, sedimentary and igneous rocks. The principal objectives of this research will be to determine the nature of fluid ($H_2O$, $CO_2$, $CH_4$) rock interaction within the earth's crust which will provide a detailed understanding of the magnitude and importance of crustal fluid movements. In addition, the instrument will provide hands on experience with a state of the art mass spectrometer for students conducting research in Geology 594 and Geology 794.

*Application Received by Commissioner of Customs:* October 24, 1988.

**Docket Number: 89–011**

*Applicant:* California Department of Food and Agriculture, Division of Plant Industry, Analysis and Identification Branch, 1220 N Street, Room 340, P.O. Box 942871, Sacramento, CA 94271–0001.

*Instrument:* Electron Miscroscope, Model EM 902.

*Manufacturer:* Carl Zeiss, West Germany.

*Intended Use:* The instrument will be used in studies to rapidly and accurately detect and identify plant diseases that pose an economic or health threat in California. The materials studied will include purified viruses, nucleic acid preparations, thin and thick sections of biological material taken from diseased woody and herbaceous plant hosts. Other plant pests will be studied including mycoplasmas, bacteria, fungi, nematodes and insects. Tissue from plants treated with a variety of pesticides or grown under adverse cultural conditions will be studied.

*Application Received by Customs:* October 25, 1988.

**Docket Number: 89–012**

*Applicant:* New York State College of Veterinary Medicine, Cornell University, Ithaca, NY 14853–6401.

*Instrument:* Ultrasonic Gas Flowmeter.

*Manufacturer:* Birmingham University Research Development Ltd, United Kingdom.

*Intended Use:* The instrument will be used for the studies of respiratory function in horses worked at varying respiratory frequencies and flow rates, and the pulmonary function in anesthetized or exercised horses.

*Application Received by Commissioner of Customs:* October 25, 1988.

**Docket Number: 89–013**

*Applicant:* Northern Arizona University, Box 4088, Flagstaff, AZ 86011.

*Instrument:* Electron Microscope, Model JEM 1200 EX II.

*Manufacturer:* JEOL Ltd., Japan.

*Intended Use:* The instrument will be used for studies of the following biological materials and phenomena:

(a) Ciliated protozoans,

(b) Flowering (cereal) plants,

(c) Epulopiscium, a unicellular organism,

(d) Plant leaves and associated (surface) bacteria,

(e) Leaves from various plants and possibly other plant parts.

These studies will be conducted in an attempt to discover what structures are present or absent, where they are located, if their form or relationships to other structures is(are) unique and/or special. In addition, the instrument will be used for teaching electron microscopy techniques to graduate students.

*Application Received by Commissioner of Customs:* October 26, 1988.

**Docket Number: 89–014**

*Applicant:* Massachusetts Insitute of Technology, 77 Massachusetts Avenue, Cambridge, MA 02139.

*Instrument:* Electron Microscope, Model JEM–1200 EX/SEG/DP/DP.

*Manufacturer:* JEOL Ltd., Japan.

*Intended Use:* The instrument will be used for studies of the ultrastructure of the small free-living nematode, *C. elegans*, addressing basic questions in cell and developmental biology.

*Application Received by Commissioner of Customs:* October 27, 1988.

**Frank W. Creel,**

*Director, Statutory Import Programs Staff.*

[FR Doc. 88–29397 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-DS-M

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## National Oceanic and Atmospheric Administration

### Gulf of Mexico Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council will convene public meetings of its Standing, Shrimp, Reef Fish, and Spiny Lobster Scientific and Statistical Committees, at the Embassy Suites Hotel, 4400 West Cypress, Tampa, FL. On January 9, 1989, at 1 p.m., the Committees will discuss the Texas shrimp closure and Amendment #5—Options Paper, and will recess at 5 p.m. On January 10 the Committees reconvene at 8:30 a.m., to review draft Reef Fish Amendment #1, and will recess at 5 p.m. On January 11 the Committees will reconvene at 8 a.m., to review draft Spiny Lobster Amendment #1 and will adjourn at 11 a.m.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: December 16, 1988.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–29350 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-22-M

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### Gulf of Mexico and South Atlantic Fishery Management Councils Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico and South Atlantic Fishery Management Councils will convene a public meeting of their Spiny Lobster Advisory Panels at the Sombrero Resort, 19 Sombrero Boulevard, Marathon, FL.

On January 12, 1989, at 10 a.m., the Panels will review and make recommendations on the proposed draft Amendment #2 to the Spiny Lobster Fishery Management Plan. The Councils, through the draft amendment, are proposing a regulatory amendment procedure under which the State of Florida could propose certain types of rules directly to the Regional Director, National Marine Fisheries Service, for implementation in Federal waters. The public meeting will adjourn at 3 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Suite 881, Tampa, FL 33609; telephone: (813) 228–2815.

Date: December 16, 1988.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–29351 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-22-M

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### Gulf of Mexico Fishery Management Council; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Gulf of Mexico Fishery Management Council, its Committees and its Shrimp Advisory Panel will convene public meetings at the Hyatt Regency Hotel, 123 Losoya, San Antonio, TX, as follows:

**Council**

On January 18, 1989, will convene at 1:30 p.m., to review the Shrimp Management Committee recommendations on the Texas shrimp closure, allow public comments from 1:45 p.m., to 2:15 p.m., and to begin reviewing Shrimp Amendment 5—Options Paper. Public comments will be heard from 3:30 p.m., to 3:45 p.m., on Spiny Lobster Amendment # 2; the Mackerel Committee will provide their recommendations of separate Council management action for mackerel. The public meeting will recess at 5 p.m., and reconvene January 19, 1989, at 8:30 a.m., to continue reviewing reports of the Ad Hoc, Law Enforcement, Reef Fish, Budget, and Habitat Protection Committees and hear a summary of the Intercouncil Shark Committee meeting, law enforcement and Directors' reports. The public meeting will adjourn at noon.

**Committees**

On January 16, 1989, the Law Enforcement Committee will convene at 3:30 p.m., and will recess at 5 p.m. The Budget Committee will convene at 3:30 p.m., and will recess at 5 p.m. On January 17, 1989, at 8 a.m., the Shrimp Management, Habitat Protection, Reef Fish, and Spiny Lobster Committees will convene and will recess at 5:30 p.m. On January 18, 1989, the Mackerel Management and Ad Hoc Magnuson Act Committees will convene at 8 a.m., and will adjourn at 11:30 a.m.

**Shrimp Advisory Panel**

On January 16, 1989, at 8 a.m., the Shrimp Advisory Panel will convene to review the 1988 Texas closure and to form recommendations to the Council for the 1989 closure. The public meeting will adjourn at 3:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Wayne E. Swingle, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, Suite 881, Tampa, FL; telephone: (813) 228–2815.

Date: December 16, 1988.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88–29352 Filed 12–21–88; 8:45 am]

BILLING CODE 3510-22-M

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## DEPARTMENT OF COMMORCE

### Mid-Atlantic Fishery Management Council; Public Meeting

**AGENCY:** National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting on January 4, 1989, at 8:30 a.m., at the Guest Quarters, Baltimore-Washington International Airport, 1300 Concourse Drive, Linthicum, MD (telephone: 301–850–0747), to discuss a shark 303(e) (2) data request and other fishery management and administration matters. The public meeting will adjourn on the afternoon of January 5 but may be legnthened or shortened depending upon progress of the agenda. The Council may convene a closed session (not open to the public) to discuss personnel and/or national security matters.

**FOR FURTHER INFORMATION, CONTACT:** John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, 300 South New Street, Room 2115, Federal Building, Dover, DE 19901–6790; telephone: (302) 674–2331.

Date: December 16, 1988.

**Richard H. Schaefer,**

*Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.*

[FR Doc. 88-29353 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### Withdrawal of Notice for Exclusive Licensing; Baxter-Healthcare Inc.

The National Technical Information Service (NTIS), U.S. Department of Commerce, withdraws its notice published on November 13, 1987 of intent to grant Baxter-Healthcare Inc. an exclusive right in the U.S. and foreign countries to practice the invention embodied in U.S. patent application S.N. 7-026,540, "Oxhydrogen Catalytic Thermal Tip for Angioplasty and the Like." The invention is now available for licensing to others. Requests for licensing and technical information may be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, P.O. Box 1423, Springfield, VA 22151.

**Douglas J. Campion,**

*Associate Director, Office of Federal Patent Licensing.*

[FR Doc. 88-29375 Filed 12-21-88; 8:45 am]

BILLING CODE 3510-04-M

## DEPARTMENT OF DEFENSE

## Department of the Air Force

### Intent To Prepare an Environmental Impact Statement for Bomarc Missile Site, McGuire Air Force Base, New Jersey

The United States Air Force (USAF), Department of Defense, will prepare an Environmental Impact Statement (EIS) for cleanup activities being evaluated for the BOMARC Missile Site at McGuire Air Force Base (AFB), New Jersey, in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 and 40 CFR Part 1500. The Air Force will develop the EIS concurrently with a Remedial Investigation and Feasibility Study (RI/FS) of the radioactive contamination of a BOMARC missile launch site near McGuire Air Force Base, resulting from a fire after a high pressure helium tank exploded 7 June 1, 1960. The site occupies approximately 218 acres within the Fort Dix Military Reservation in Ocean County, New Jersey. The site lies within the Pinelands National Reserve. The Air Force has attached a high priority to those actions required to ensure that the site is in compliance with applicable environmental laws and regulations.

The boundaries of the contaminated area will be established and the location and disposition of contaminants and contaminated material will be determined. Environmental health effects will be analyzed and a risk assessment conducted. Contaminant receptors and migration pathways will be identified and investigated. A range of actions and alternatives will be evaluated as to the degree of protection they would provide, the resultant reductions in contaminant toxicity, mobility, or volume they would achieve, and their environmental consequences. Data will be acquired to permit a comparison of remediation alternatives and the selection of a remedy sufficient to satisfy all applicable or relevant and appropriate requirements (ARARs) of Federal, state, and local public health and environmental laws, regulations, standards, policies, and criteria. The adverse and beneficial effects on the environment of all options will be evaluated. In screening alternatives, consideration will be given to their cost effectiveness, permanence, and protection of human health and the environment.

Significant issues or concerns to be addressed in the EIS include, but are not limited to, the distribution of radioactive contamination around the site; extent of contamination through air dispersion; migration of contaminants through groundwater acquifers, or surface runoff water; physical transport of contaminants by humans or animals; the effect of the incident on the ecosystem; and the efficiency of post-accident management efforts to reduce hazards through decontamination, containment, or removal of hazardous or potentially hazardous materials, and the appropriate degree of cleanup consistent with public health and welfare and present and future uses of the site.

The EIS will be prepared by an interdisciplinary team with expertise appropriate to the scope of study and issues identified through the scoping process. Two scoping meetings will be held on 11 January 1989. The first, will be at 9:00 a.m. at the Officers' Open Mess at McGuire Air Force Base, New Jersey, and will be for federal, state, and local officials. A scoping meeting for the general public will be held at 7:00 p.m. that day at the Township Municipal Building, Jackson, New Jersey. These meetings will enable interested parties to acquire additional information on these studies or to provide suggestions or comments on the scope of the analyses to be undertaken.

Anyone wishing to provide written comments regarding issues to be addressed in the EIS should provide them within 30 days of the publication of this notice in the **Federal Register**. Written comments should be addressed to: MAC/DEEV, Scott AFB IL 62225-5001.

For further information on the RI/FS, contact Mr. Wayne Caughman, or on the EIS, contact Ms. Patricia Calliott. Both are located at HQ Military Airlift Command/DEEV, Scott AFB IL 62225-5001. Telephone inquiries may be made at 618.256-5764.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-29094 Filed 12-21-88; 8:45am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Aircraft Infrastructure—Subsystem and Component Reliability Improvement Research and Development Needs will meet on 10 through 11 January, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to prepare and present the study's outbrief to SAF/AQ. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88-29356 Filed 12-21-88; 8:45 am]

BILLING CODE 3910-01-M

### USAF Scientific Advisory Board; Ad Hoc Committee on Conventional, Munitions; Meeting

December 19, 1988.

The USAF Scientific Advisory Board AD Hoc Committee on Conventional Munitions will meet on 24-26 January, 1989 at the Pentagon, Washington, DC.

The purpose of this meeting is to gather information on requirements and technological advances in conventional

munitions. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29360 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Ad Hoc Committee on Electronic Combat; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Combat will meet on 10–12 Jan 89 from 8:00 a.m. to 5:00 p.m. at the Pentagon, DC 20330.

The purpose of this meeting will be to review Air Force Electronic Combat programs, to develop an organizational structure for the committee, and to establish a program plan for conducting the study. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29357 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Ad Hoc Committee on Electronic Warfare; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Electronic Warfare will meet on 18 January 1989 from 8:00 a.m. to 5:00 p.m. at Headquarters Strategic Air Command, Offutt AFB, NE 68113.

The purpose of this meeting is to review Air Force electronic warfare programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29359 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Ad Hoc Committee on Hypervelocity Gun Technology; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Ad Hoc Committee on Hypervelocity Gun Technology will meet on 26 January 1989 from 8:00 a.m. to 5:00 p.m. at the Pentagon, Washington, DC 20330–5430.

The purposes of this meeting are to review the progress in the development of hypervelocity gun technology and to assess the potential for application of the "Ram Cannon" concept. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29361 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Airlift Cross-Matrix Panel Meeting

December 19, 1988.

The USAF Scientific Advisory Board Airlift Cross-Matrix Panel will meet on 17–19 Jan 89 from 8:00 a.m. to 5:00 p.m. at Headquarters Military Airlift Command, Scott AFB, IL.

The purpose of the meeting will be to provide an orientation for the new members of the Panel, and to review the roles and missions of the Command as well as Military Airlift Command programs. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29358 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Division Advisory Group for Space Division; Meeting

December 19, 1988.

The USAF Scientific Advisory Board Division Advisory Group (DAG) for Space Division (AFSC) will meet on 6–8 February 89 from 8:00 a.m. to 5:00 p.m. at Vandenberg AFB, CA 93437. This meeting was previously announced for 6–8 December 1988 and is rescheduled from those dates.

The purpose of this meeting is to review plans for the Space Test Range. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29362 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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### USAF Scientific Advisory Board; Meeting

December 14, 1988.

The USAF Scientific Advisory Board Logistics Cross-Matrix Panel originally scheduled to meet on January 11–12, 1989 will now meet on January 17–18, 1989, from 8:00 a.m. to 5:00 p.m., at HQ AFLC, Wright-Patterson AFB, OH.

The purpose of this meeting will be to facilitate the exchange of information on technical development and logistics operations issues. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697–4648.

**Patsy J. Conner,**

*Air Force Federal Register Liaison Officer.*

[FR Doc. 88–29450 Filed 12–21–88; 8:45 am]

BILLING CODE 3910–01–M

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## Department of the Army

### Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of the Committee:* Army Science Board (ASB).

*Dates of Meeting:* January 9–10, 1989.

*Time of Meetings:* 0800–1700 hours daily.

*Place:* Pentagon, Washington, DC.

*Agenda:* The Army Science Board Ad Hoc Subgoup for Tactical Applications of Directed Energy Weapons (DEW) will meet to review two specific systems, brief Army principals, and finalize the tactical applications of the DEW report. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 88–29300 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of The Committee:* Army Science Board (ASB).

*Dates of Meeting:* January 10–11, 1989.

*Time of Meetings:* 0900–1630, January 10, 1989, 0900–1130, January 11, 1989.

*Place:* TRADOC Analysis Command, White Sands, New Mexico.

*Agenda:* The Army Science Board Ad Hoc Subgroup for Army Analysis will meet to discuss in detail some specific models. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 1, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. Contact the Army Science Board Administrative Officer, Sally Warner, for further information (202) 695–3039 or 695–7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 88–29301 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following meeting:

*Name of the Committee:* Army Science Board.

*Dates of the Meeting:* January 11–12, 1989.

*Time:* 0800–1700 hours each day.

*Place:* SDC Headquarters, Crystal Mall 4, Arlington, VA.

*Agenda:* The Army Science Board Ad Hoc Subgroup on Ballistic Missile Defense (Follow-on) will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of BMD requirements, technology, and specific critical issues impacting on program development. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 88–29299 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

## Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

*Name of Committee:* Army Science Board (ASB).

*Dates of Meeting:* January 12–13, 1989.

*Time:* 0900–1630. January 12, 1989, 0800–1200. January 13, 1989.

*Place:* Aerospace Corporation, Los Angeles. CA.

*Agenda:* The Army Science Board Ad Hoc Subgroup on Space Systems will meet for classified briefings and discussions reviewing matters that are an integral part of or related to the issue of the study effort. The subgroup is tasked with a comprehensive review of space concepts, technology, and related issues. These meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695–3039/7046.

**Sally A. Warner,**

*Administrative Officer, Army Science Board.*

[FR Doc. 88–29302 Filed 12–21–88; 8:45 am]

BILLING CODE 3710–08–M

## Privacy Act of 1974; Altered System of Records

**AGENCY:** Department of the Army, DOD.

**ACTION:** Notice of an altered system of records subject to the Privacy Act of 1974.

**SUMMARY:** The Department of the Army is publishing a notice for public comment on an altered system of records included in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a).

**DATES:** This proposed action will be effective without further notice on January 23, 1989, unless comments are received which result in a contrary determination.

**ADDRESS:** Send comments to the record system manager identified in the record system notice set forth below.

**FOR FURTHER INFORMATION CONTACT:** Mr. Cliff Jones, AS–OPS–MR, Fort Huachuca, AZ 85613–5000, *telephone:* 602–538–6568, *autovon:* 879–6568.

**SUPPLEMENTARY INFORMATION:** The Department of the Army systems of records notices subject to the Privacy Act of 1974 have been published in the **Federal Register** as follows:

FR Doc. 85–10237 (40 FR 22090) May 29, 1985 (Compilation)
FR Doc. 86–14667 (51 FR 23576) June 30, 1986
FR Doc. 86–19534 (51 FR 30900) August 29, 1986
FR Doc. 86–25274 (51 40479) November 7, 1986
FR Doc. 86–27580 (51 FR 44361) December 9, 1986
FR Doc. 87–8140 (52 FR 11847) April 13, 1987
FR Doc. 87–11379 (52 FR 18798) May 19, 1987
FR Doc. 87–15611 (52 FR 25905) July 9, 1987
FR Doc. 87–19686 (52 FR 32329) August 27, 1987
FR Doc. 87–26438 (52 FR 43932) November 17, 1987
FR Doc. 88–8671 (53 FR 12971) April 20, 1988
FR Doc. 88–10355 (53 FR 16575) May 10, 1988
FR Doc. 88–12861 (53 FR 21509) June 8, 1988
FR Doc. 88–16946 (53 FR 28247) July 27, 1988
FR Doc. 88–16901 (53 FR 28249) July 27, 1988
FR Doc. 88–17036 (53 FR 28430) July 28, 1988

FR Doc. 88-20256 (53 FR 34576) September 7, 1988

An altered system report as required by 5 U.S.C. 552a(o) of the Privacy Act of 1974 was submitted on 7 December 1988, pursuant to paragraph 4b of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated December 12, 1985.

December 19, 1988.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

**A0725.01aCFSC**

*System name.*

Child Development Services (CDS)

*System location.*

Child Development Services, Army-wide. Addresses may be obtained from the System Manager.

*Categories of individuals covered by the system.*

Any person or entity who directly or indirectly uses or provides any services under the auspices of CDS.

*Categories of records in the system.*

Documents include, but are not limited to, parent's, guardian's and provider's name, grade or rank, SSN, home and office telephone number and address, signature of parent/guardian for emergency notification; child's name, birthdate, medical information including allergies, immunization dates, communicable diseases, and other pertinent data; remarks, observations and recommendations by CDS program employees, providers, parents, physicians and other pertinent to CDS functions.

*Authority for maintenance of the system.*

10 U.S.C., section 3013 and E.O. 9397.

**PURPOSE(S).**

To provide safe, quality Child Development Services by ensuring that providers and caregivers are qualified and well suited to provide child care functions; and to ensure adequate information and releases are available on all children served.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.**

Information from this system may be disclosed to civilian health and welfare departments/agencies in emergency situations. Additionally, information will be used to comply with statutory or regulatory reporting and administrative requirements. See "Blanket Routine Uses" set forth at the beginning of the Army's listing of record system notices.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE.**

Card files; paper files in folders; magnetic tapes/discs.

**RETRIEVABILITY.**

By surname and/or SSN or parent or guardian.

**SAFEGUARDS.**

Records are accessible only to authorized personnel. Positive identification to access data is established prior to releasing personal data to an individual. Computer systems/remote terminals are housed in designated controlled areas.

**RETENTION AND DISPOSAL.**

Child's records are destroyed 1 year after child no longer attends CDS operations. Records of children who have had serious accidents, injuries, or unusual occurrences requiring emergency consultation or treatment are destroyed 3 years after incident or 1 year after child no longer attends CDS operations, whichever is longer. Personnel records of center-based employees (These records do not include official personnel files), are destroyed 3 years after termination of employment. Information may be transferred from one Child Development Services to another upon transfer of child.

**SYSTEM MANAGER(S) AND ADDRESS.**

Commander, U.S. Army Community and Family Support Center, 2461 Eisenhower Avenue, Alexandria, VA 22331-0521.

**NOTIFICATION PROCEDURE.**

Individuals wishing to know whether or not information on them is contained in this system of records should write to the Coordinator, Child Development Services at the installation where record is believed to exist. Individual must provide present name, rank, SSN and proof of identification.

**RECORD ACCESS PROCEDURES.**

Individuals desiring access to records about themselves should address an inquiry as indicated in "Notification procedure", providing information specified therein.

**CONTESTING RECORD PROCEDURES.**

The Army's rules for access to records and for contesting contents and appealing initial determination are contained in Army Regulation 340-21 (32 CFR Part 505).

**RECORD SOURCE CATEGORIES.**

From the individual receiving service; Army records and reports.

**EXEMPTIONS CLAIMED FOR THE SYSTEM.**

None.

[FR Doc. 88-29330 Filed 12-21-88; 8:45 am]
BILLING CODE 3810-01-M

## Corps of Engineers, Department of the Army

### Intent to Prepare a Draft Environmental Impact Statement/ Environmental Impact Report (DEIS/ EIR) For the Kaweah River Basin Investigation, Tulare County, CA

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The proposed action includes study of alternatives that would provide greater flood protection for interests downstream of Lake Kaweah. The EIS/ EIR will examine the feasibility of several alternatives that satisfy this objective and also evaluate the benefits of the additional water supply storage for irrigation, recreation, and hydropower. Flooding in the Kaweah River Basin has been a problem since the mid-1800's and is expected to worsen in the future following further changes and intensification in floodplain land use. Sedimentation in the existing reservoir coupled with unpredictably arid climatic conditions may result in water supplies that are inadequate to meet all the perceived water-related needs of the area. The proposed alternatives could help to alleviate flooding and provide additional water storage for future water needs.

**FOR FURTHER INFORMATION CONTACT:** Questions or comments about the proposed action and DEIS should be addressed to Mr. Jeff Groska, at telephone (916) 551-1860, or in writing to the District Engineer, U.S. Army Corps of Engineers, Sacramento District, 650 Capitol Mall, Sacramento, California 95814-4794. Responses specifically related to CEQA requirements of the EIR may be directed to Mr. James Crook, Kaweah Delta Water Conservation District, P.O. Box 1247, Visalia, California 93279, (209) 732-0111.

**SUPPLEMENTARY INFORMATION:**

**1. Proposed Action**

The study will determine the

feasibility of constructing additional facilities to control flooding along the Kaweah River and to provide additional water supply storage. The Corps of Engineers will prepare a report on its findings to be submitted to Congress.

**2. Alternatives**

Alternatives being considered in detail for feasibility studies consist of (a) No action, (b) nonstructural, (c) Enlargement of Lake Kaweah, (d) and a Dry Creek Reservoir for flood control only or multiple-purpose flood control and water supply, with a connecting tunnel to Lake Kaweah. Other alternatives considered during reconnaissance studies which are not considered viable solutions but will be reported on in the DEIS/EIR consist of (e) Groundwater recharge/spreading, (f) Levee and channel improvements, (g) Diversion canals, (h) Pumping into the Friant-Kern Canal, (i) Upstream reservoirs, (j) Dredging Lake Kaweah, (k) Flood control detention reservoirs on Dry Creek, and (1) Limekiln Reservoir at the confluence of Dry Creek and Kaweah River.

**3. Scoping Process**

a. Studies addressing additional flood control in the Kaweah River Basin began in 1985. The Corps completed a reconnaissance study in January 1988 which identified several acceptable alternatives to be carried into feasibility studies. A public workshop was held in 1986 and a formal public meeting in 1987, both in Visalia, California. The purpose of the workshop was to discuss the need for flood control and to identify local concerns and opportunities to improve water related resources. The results of the reconnaissance study were presented at the formal public meeting. Close coordination is being maintained with Federal, State, local sponsors, local agencies, environmental organizations, concerned individuals. This is being accomplished through public meetings, public notices and inter-agency coordination. Through this Notice of Intent all segments of the affected public and agencies are invited to participate in the planning process.

b. Significant issues that will be analyzed in depth in the EIS include: displacement of people. land use, noise, air quality, endangered species, wildlife resources, fishery resources, cultural resources, riparian vegetation, flood protection, dam failure, water quality, and transportation.

c. The Kaweah Delta Water Conservation District is the local sponsor for the study and is cost-sharing 50 percent of the total study cost. Cost sharing partners to the study sponsor are: City of Visalia, Tulare County, Kings County, and California Department of Water Resources. The sponsor will participate with the Corps of Engineers in study management and plan formulation processes. Specific work items to be accomplished by the local interests include preparation of a Biological Data Report on impacts to endangered species, identification of environmental baseline conditions, identification of baseline socioeconomic conditions, identification of current land use, and assistance in the preparation of the Habitat Evaluation Procedure (HEP).

d. Significant review and consultation requirements to be conducted during the study include coordination with the U.S. Fish and Wildlife Service and California Department of Fish and Game under the Fish and Wildlife Coordination Act and Endangered Species Act, consultation with the State Historic Preservation Officer and Advisory Council on Historic Preservation under the National Historic Preservation Act, and coordination with the California Water Quality Control Board and Environmental Protection Agency on water quality issues under Section 404 of the Clean Water Act. As this report will be a joint DEIS/EIR, coordination and review requirements of both the National Environmental Policy Act and the California Environmental Quality Act will be completed.

**4. Meeting Schedule**

Public meetings for the specific purpose of scoping are not being considered. Scoping letters and public meetings during the reconnaissance study phase served to identify significant concerns and potential solutions. An April 26, 1988, Notice of Initiation of Feasibility Studies was mailed to interested agencies, organizations, and individuals. That notice and this Notice of Intent to Prepare a DEIS/EIR provide further opportunity for interested parties to provide input into the scope of the feasibility study and potential solutions.

**5. Availability**

The DEIS/EIR is scheduled to be available to the public in January 1991.

**Jack A. Le Cuyer,**

*Colonel, Corps of Engineers, District Engineer.*

November 30, 1988.

[FR Doc. 88-29447 Filed 12-21-88; 8:45 am]

BILLING CODE 3710-GH-M

## DEPARTMENT OF ENERGY

### Financial Assistance Award; Intent To Award Grant Agreement to International Gas Research Conference

**AGENCY:** U.S. Department of Energy (DOE).

**ACTION:** The U.S. DOE announces pursuant to 10 CFR 600.7(b), it is restricting eligibility for award of DE-FC01-89FE61774 to the International Gas Research Conference in partial support of the 1989 International Gas Research Conference to be held at Keio Plaza Hotel, Tokyo, Japan, on November 6 through 9, 1989.

**SUMMARY:** The work of the 1989 International Gas Research Conference is to address the field of worldwide gas technology and gas related research in the areas of distribution; transmission; residential, commercial, and industrial utilization; environment; supply technologies; and gas properties and combustion. The conference will bring together scientific researchers and practical engineers to explore a breath of established disciplines in the international gas technology field. It offers an excellent opportunity for formal and informal interactions among delegates and guests.

**Eligibility**

Award of this effort is restricted to the International Gas Research Conference because the proposed grantee is the only known entity conducting or planning to conduct such a conference on gas research technology in the near future. The International Gas Research Conference is an international biennial conference series with previous meetings having been held in the United States (Chicago, Los Angeles, Washington, DC); Toronto, Canada; and London, England. This is to be the first International Gas Research Conference to be held in Asia. DOE support of the 1989 International Gas Research Conference will enhance the public benefits by increasing the cooperative information exchange among key DOE and international industrial participants.

**FOR FURTHER INFORMATION CONTACT:** Albert G. Dietz, Jr., FE-10, Senior Scientific and Technical Advisor, ASFE, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874, (301) 353-6138.

**J. Allen Wampler,**

*Assistant Secretary for Fossil Energy.*

[FR Doc. 88-29425 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

## Assistant Secretary for International Affairs and Energy Emergencies

### Proposed Subsequent Arrangement, EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves the return of 12,935 grams of uranium enriched to 20 percent in the isotope 235 from the Triga research reactor in Rome, Italy to U.S. DOE facilities for storage. The return of highly enriched uranium (HEU) is consistent with U.S. nonproliferation policy in that it serves to reduce the amount of HEU abroad.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88-29426 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

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### Proposed Subsequent Arrangement, EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for the sale of 60 grams of uranium-238 from the United States to Harwell Laboratory, United Kingdom to be used in measurements of the neutron capture cross-section in the neutron energy region from thermal to several 100's keV. Contract Number S-EU-948 has been assigned to this sale.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88-29427 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

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### Proposed Subsequent Arrangement; Taiwan

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" pursuant to the Taiwan Relations Act of 1979 (Pub. L. 96-8).

The subsequent arrangement to be carried out under the above-mentioned authority involves approval of the following sale. Contract Number S-CI-23, for the supply of one milligram of uranium-233, one milligram of uranium-234, one milligram of uranium-236 and 100 micrograms of thorium-229. These materials are to be used for studies of natural isotopic variations in geological and marine samples for age determination and source tracing.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: December 19, 1988.

**George J. Bradley, Jr.,**

*Principal Deputy Assistant Secretary for International Affairs and Energy Emergencies.*

[FR Doc. 88-29428 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Objection to Proposed Remedial Orders Filed; Period of November 7 Through December 2, 1988

During the period of November 7 through December 2, 1988, the notices of objection to proposed remedial orders listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Any person who wishes to participate in the proceeding the Department of Energy will conduct concerning the proposed remedial orders described in the Appendix to this Notice must file a request to participate pursuant to 10 CFR 205.194 within 20 days after publication of this Notice. The Office of Hearings and Appeals will then determine those persons who may participate on an active basis in the proceeding and will prepare an official service list, which it will mail to all persons who filed requests to participate. Persons may also be placed on the official service list as non-participants for good cause shown.

All requests to participate in these proceedings should be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

December 15, 1988.

### Richome Oil and Gas Co., Jerome B. Herrmann, Richard P. Herrmann, Amarillo, Texas, KRO-0710

On November 28, 1988, Richard P. Herrmann, P.O. Box 9940, Amarillo, Texas 79105, filed a Notice of Objection to a Proposed Remedial Order (PRO) which the Department of Energy Economic Regulatory Administration (ERA) issued to Richome Oil and Gas Co., Jerome B. Herrmann, and Richard P. Herrmann on September 21, 1988. On November 29, 1988, Jerome B. Herrmann and Richome Oil & Gas Co., 610 SW. 11th Street, Amarillo, Texas 79101, also filed a Notice of Objection to the PRO. In the PRO, the ERA determined that during the time period November 1973 through December 1974, Richome produced and sold 26,334.28 barrels of domestic price controlled crude oil at exempt prices, in violation of 6 CFR 150.354(c), 10 CFR 212.73(a) and 10 CFR 212.74.

According to the PRO, the violation resulted in $137,030.20 of overcharges.

**Salomon, Inc. et al., Wilmington, DE, KRO-0720**

On November 29, 1988, Salomon, Inc. *et al.*, c/o Corporation Trust Co., Corporation Trust Plaza, 1209 Orange Street, Wilmington, DE 19801 filed a Notice of Objection to a Proposed Remedial Order which the DOE Economic Regulatory Administration issued to the firms on September 23, 1988. In the PRO the ERA found that during January 1, 1978 to December 31, 1980, the firms resold crude oil in violation of, *inter alia*, 10 CFR 212.183 (the crude oil resale price rule) and 212.186 (the crude oil layering rule).

According to the PRO, the violation resulted in $107,973,814.48 of overcharges.

[FR Doc. 88-29424 Filed 12-21-88; 8:45 am]

BILLING CODE 6450-01-M

**Cases Filed, Week of November 11 Through 18, 1988**

During the Week of November 11 through 18, 1988, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. A submission inadvertently omitted from an earlier list has also been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

December 15, 1988.

**George B. Breznay,**

*Director, Office of Hearings and Appeals.*

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of November 11 through November 18, 1988]

| Date | Name and Location of Applicant | Case No. | Type of Submission |
|---|---|---|---|
| Sept. 1, 1988 | Amoco/Indiana, Indianapolis, IN | RM251-135 | Request for Modification/Rescission. *If Granted:* The May 28, 1987 Decision and Order issued to Indiana would be modified, regarding the state's application in the Amoco II second stage refund proceeding. |
| Nov. 14, 1988 | San Jose Mercury News, San Jose, CA | KFA-0231 | Appeal of an Information Request Denial. *If Granted:* The November 3, 1988, Freedom of Information Request Denial issued by the San Francisco Operations Office would be rescinded and the San Jose Mercury News would receive access to a copy of a Lawrence Livermore National Laboratory report entitled "Columns of Fire in the Valley of the Giant Mushrooms". |
| Nov. 14, 1988 | Arkansas, Little Rock, AR | KER-0049 | Request for Modification/Rescission. *If Granted:* The August 5, 1988 Decision and Order issued to Arkansas would be rescinded regarding the state's appeal of the Dallas Support Office's decision. |
| Nov. 15, 1988 | Oasis Petroleum Corporation, Washington, DC | KRD-0650 KRH-0650 | Motion for Discovery and Request for Evidentiary Hearing. *If Granted:* Discovery would be granted and an evidentiary hearing would be convened in connection with the Proposed Remedial Order issued to Oasis Petroleum Corporation (Case No. KRO-0650). |
| Nov. 21, 1988 | Economic Regulatory Administration, Washington, DC. | KRZ-0525 | Interlocutory. *If Granted:* In the Proposed Remedial Order issued to Kern Oil and Refining, Inc. (Case No. KRO-0520), the potential personal liability against Donald M. LeDoux would be dismissed and the liability against Larry D. Delpit would be limited to 25 percent of the overcharge alleged against the Corportation. |
| Nov. 18, 1988 | Economic Regulatory Administration, Washington, DC. | KRR-0050 | Request for Modification/Rescission. *If Granted:* The September 29, 1988 Decision and Order issued to Phoenix Petroleum Company (Case No. KRO-0190) would be modified, regarding the personal liability of Steven B. Wyatt for a portion of the Phoenix Petroleum overcharges. |

REFUND APPLICATIONS RECEIVED

[Week of November 11 through November 18, 1988]

| Date received | Name of Refund Proceeding/ Name of Refund Applicant | Case Number |
|---|---|---|
| 11/7/88 | Ronald Adkisson | RF310-323 |
| 11/10/88 | Cyprus Bagdad Copper Corp. | RD272-61260 |
| 11/11/88 thru 11/18/88. | Gulf Oil Refund | RF300-10598 thru RF300-10603 |
| 11/11/88 thru 11/11/88. | Exxon Refund | RF307-6678 thru RF307-6767 |
| 11/11/88 thru 11/18/88. | Crude Oil Refund. | RF272-75100 thru RF272-75115 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

| Date received | Name of Refund Proceeding/ Name of Refund Applicant | Case Number |
|---|---|---|
| 11/11/88 thru 11/18/88. | Atlantic Richfield Refund. | RF304-7221 thru RF304-7271 |
| 11/11/88 thru 11/18/88. | Murphy Oil Refund. | RF309-529 thru RF309-571 |
| 11/14/88 | City of Tulsa | RF139-202 |
| 11/14/88 | Northwestern Steel & Wire Co. | RD272-64610 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

| Date received | Name of Refund Proceeding/ Name of Refund Applicant | Case Number |
|---|---|---|
| 11/14/88 | Great Lakes Carbon Corporation. | RD272-67247 |
| 11/14/88 | Warner Company. | RD272-67949 |
| 11/14/88 | Grow Group, Inc. | RD272-68932 |
| 11/14/88 | Chicago Milwaukee Corporation. | RD272-69326 |

REFUND APPLICATIONS RECEIVED—Continued

[Week of November 11 through November 18, 1988]

| Date received | Name of Refund Proceeding/ Name of Refund Applicant | Case Number |
|---|---|---|
| 11/14/88 | Delaware and Hudson Railway Co. | RD272-71613 |
| 11/15/88 | City of Granville | RF139-203 |
| 11/16/88 | ICI Americas, Inc. | RD272-61737 |
| 11/16/88 | QO Chemicals, Inc. | RD272-64300 |
| 11/16/88 | National Forge Company. | RD272-68991 |

[FR Doc. 88-29423 Filed 12-21-88; 8:45 am]
BILLING CODE 6450-01-M

## FEDERAL COMMUNICATIONS COMMISSION

**[Report No. 1762]**

### Petitions for Reconsideration; Applications for Review and Petitions for Stay of Actions in Rule Making Proceedings

December 15, 1988.

Petitions for reconsideration, applications for review and petitions for stay have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions and applications must be filed January 9, 1989.

See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

*Subject:* Establishment of a Fee Collection Program to Implement the Provisions of the Consolidated Omnibus Budget Reconsideration Act of 1985. (Gen. Docket No. 86-285)

*Number of petitions received:* 3.

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Cathage, Illinois) (MM Docket No. 88-236, RM-5725)

*Number of petitions received:* 1.

*Petition for Stay*

*Subject:* Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (San Clemente, California) (MM Docket No. 84-442, RM-4724)

*Number of petitions received:* 1.

Federal Communications Commission.

**Donna R. Searcy,**

*Secretary.*

[FR Doc. 88-29373 Filed 12-21-88; 8:45 am]
BILLING CODE 6712-01-M

**[MM Docket No. 88-538]**

### Applications for Consolidated Hearing; Sarasota-Charlotte Broadcasting Corp. et al.

1. The Commission has before it the following mutually exclusive applications for a new FM station:

| Applicant, City, and State | File No. | MM Docket No. |
|---|---|---|
| A. Sarasota-Charlotte Broadcasting Corp., Englewood, FL. | BPH-870908MX | 88-538 |
| B. William A. James, Englewood, FL. | BPH-870909ML | |
| C. South Florida Broadcast Limited Partnership, Englewood, FL. | BPH-870910MK | |
| D. Cawley Broadcasting Corporation, Inc., Englewood, FL. | BPH-870910MM | |
| E. Russell Earl Warren, Jr., Englewood, FL. | BPH-870910MM | |
| F. Charles L. Fernandez and Tony W. Fernandez, Englewood, FL. | BPH-870910MR | |
| G. Constance Whitaker and Warren Koerbel, General Partners, d/b/a Seafoam Broadcasters, LTD., Englewood, FL. | BPH-870910MW | |
| H. A.P. Walter, Jr., Englewood, FL. | BPH-870910MY | |
| I. Englewood Radio, Inc., Englewood, FL. | BPH-870910NS | |
| J. Sandpiper Broadcasting Inc., Englewood, FL. | BPH-870910OG | |
| K. Harbor Sounds, Inc., Englewood, FL. | BPH-870910MA (Dismissed Herein). | |
| L. Englewood Broadcasting Associates, Englewood, FL. | BPH-870910NG (Dismissed Herein). | |
| M. New South Communications, Inc., Englewood, FL. | BPH-870910OA (Dismissed Herein). | |

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

*Issue Heading and Applicant(s)*

1. Air Hazard, B-J
2. Comparative, A-J
3. Ultimate, A-J

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

**W. Jan Gay,**

*Assistant Chief, Audio Services Division, Mass Media Bureau.*

[FR Doc. 88-27372 Filed 12-21-88; 8:45 am]
BILLING CODE 6712-01-M

## FEDERAL RESERVE SYSTEM

### Bay Banks, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1989.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bay Banks, Inc.*, Boston Massachusetts; to acquire The New York Switch Corporation, Hackensack, New Jersey, and thereby engage in data processing and related activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-29305 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

## CB&T Financial Corp., et al., Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 13, 1988.

A. **Federal Reserve Bank of Richmond** (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *CB&T Financial Corp.*, Fairmont, West Virginia; to engage *de novo* through its subsidiary, CB&T Capital Investment Company, Fairmont, West Virginia, and thereby engage in making and servicing commercial loans and other extensions of credit and making equity investments of 5 percent or less pursuant to § 225.25(b)(1)(iv) of the Board's Regulation Y.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *One National Bancshares, Inc.*, Little Rock, Arkansas; to engage *de novo* through its subsidiaries, Investment Securities, Inc., Little Rock, Arkansas, and Bowman & Co. Futures, Inc., Little Rock, Arkansas, in securities brokerage, providing securities brokerage services and such incidental services as may be required from time to time, incuding offering custodial services, individual retirement accounts, and cash management services on behalf of customers pursuant to § 225.25(b)(15); and acting as a futures commission merchant for nonaffiliated persons in the execution and clearance on major commodity exchanges of futures contracts and options on futures contracts for bullion, foreign exchange, government securities, certificates of deposit and other money market instruments that a bank may buy or sell in the cash market for its own account, pursuant to § 225.25(b)(18) of the Board's Regulation Y. The activities will be conducted in and around Little Rock, Arkansas.

C. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *The Bank of Tokyo, Ltd.*, Tokyo, Japan; to engage *de novo* through its subsidiary, BOT Futures, Inc., New York, New York, in acting as a futures commission merchant for nonaffiliated persons pursuant to § 225.25(b)(18) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-29306 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

## Eastern Savings Bancorp, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 5, 1989.

A. **Federal Research Bank of Boston** (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

*1. Eastern Savings Bancorp, Inc.*, Lynn, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of Eastern Bank (Eastern), Lynn, Massachusetts, a *de novo* bank, and 5.24 percent of the voting shares of Family Bancorp, Haverhill, Massachusetts, and thereby indirectly acquire The Family Mutual Savings Bank, Haverhill, Massachusetts.

In connection with this application, Applicant also proposes to acquire Eastern Bank & Trust Company, Salem, Massachusetts, and thereby engage in trust company functions pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 16, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-29307 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

## Gwinnett Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 USC 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it wil also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received no later than January 11, 1989.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Gwinnett Bancorp, Inc.*, Duluth, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Gwinnett National Bank, Duluth, Georgia, a *de novo* bank.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Athens Bancorp, Inc.*, Athens, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Athens State Bank, Athens, Illinois.

C. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Chambanco, Inc.*, Chambers, Nebraska; to acquire an additional 43.7 percent of the voting shares of Ewing Agency, Inc., Ewing, Nebraska, and thereby indirectly acquire Farmers State Bank, Ewing, Nebraska.

Board of Governors of the Federal Reserve System, December 16, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88-29308 Filed 12-21-88; 8:45 am]

BILLING CODE 6210-01-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Office of the Secretary

### Statement of Organization, Functions and Delegations of Authority; Management and Budget, Assistant Secretary

Part A, (Office of the Secretary) of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services is amended to reflect a transfer of responsibilities within the Office of the Assistant Secretary for Management and Budget. Specifically, Chapter AMN (Office of Finance) (as last published at 53 FR 39145 on October 5, 1988) is being amended to better align certain management responsibilities within the Office of Finance.

Make the following changes to Chapter AMN:

1. Section AMN. 20 Functions. Insert the following after Item 2j:

The Office of Financial Policy is comprised of the following:

*A. Division of Financial Management Policy (DFMP)*

The Division of Financial Management Policy (DFMP) functions as one of two major components within the Office of Financial Policy, Office of Finance and is responsible for all Department-wide policies, procedures and standards relating to cash management, credit management, debt management, payment management, travel management and entitlement grants. The Division has the following responsibilities:

a. Develops Department-wide policies, procedures and standards for financial management areas including cash management, credit management, debt management, payment management, travel management and entitlement grants and promulgates these and related Government-wide financial management requirements through the Department Staff Manual System.

b. Provides advice and assistance to OPDIV's and STAFFDIV's on financial management areas.

c. Serves as principal staff advisors to the Office of Finance on financial management matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting financial management of the Department's programs.

e. Maintains liaison with Office of Management and budget (OMB), the Treasury Department, the General Accounting Office (GAO), and other agencies on all fnancial management matters including entitlement grant policy.

f. Recommends policy and maintains a system for tracking and improving cash and credit management and debt collection performance throughout the Department.

g. Developes and maintains travel and voucher examination policies for Department-wide applications and publishes policies through the Department Staff Manual System.

h. Performs studies or analyses in any of these or related subjects singly or with outside organizations. Maintains continuous contact with GAO, OMB, Treasury, GSDA or other agencies.

*B. Division of Accounting and Fiscal Policy (DAFP)*

The Division of Accounting and Fiscal Policy (DAFP) functions as one of two major components within the Office of Financial Policy, Office of Finance and is responsible for matters relating to accounting policiy, fiscal policy,

financial statements presentation, publications, and legislative and other special initiatives. The Division has the following responsibilities:

a. Develops policies, procedures and standards for Department-wide accounting and fiscal areas including legislative or other special accounting policy initiatives such as the Standard General Ledger (SGL) and promulgates these policies, procedures and standards as well as other Government-wide accounting and fiscal procedures through the Department Staff Manual System and maintains appropriate reference material.

b. Provides advice and assistance to OPDIV's and STAFFDIV's on accounting and related fiscal matters.

c. Serves as principal advisors to the Office of Finance on accounting and related fiscal matters.

d. Reviews and drafts Departmental reports on Congressional bills affecting accounting and related fiscal matters.

e. Maintains liaison with Office of Management and Budget (OMB), the Treasury Department, the General Accounting Office (GAO), and other agencies on matters involving accounting and realted fiscal matters.

f. Develops and maintains financial statements presentation policies, procedures and standards for Department-wide applications.

g. Peforms studies or analyses in any of these or related subjects singly or with outside organizations. Maintains continuous contact with GAO, OBM, Treasury, GSA or other agencies.

Date: December 15, 1988.

**S. Anthony McCann,**

*Assistant Secretary for Management and Budget.*

[FR Doc. 88-29345 Filed 12-21-88; 8:45 am]

BILLING CODE 4510-04-M

## Centers for Disease Control

### Meetings: Fall Injuries to Older Persons, Reduction; Potential Interventions

**ACTION:** Notice of Meeting-Potential Interventions to Reduce Fall Injuries to Older Persons.

TIME AND DATE: 8:30 a.m.—5:00 p.m.; January 9, 1989, 8:30 a.m.—1:00 p.m.; January 10, 1989.

PLACE: South Shore Hospital, 600 Alton Road, Miami Beach, Florida.

**STATUS:** Open to the public, limited only by the space available.

MATTERS TO BE DISCUSSED: The Centers for Disease Control (CDC) is convening a public meeting with experts from the fields of geriatric medicine, injury epidemiology and control, and health education regarding potential interventions which may be effective in reducing fall injuries among older persons, in particular the frail elderly. The purpose of the meeting is to assist CDC and the Dade County Health Unit in developing recommentations for a pilot intervention program designed to reduce fall injuries in South Miami Beach, Florida.

**FOR FURTHER INFORMATION CONTACT:** Stuart T. Brown, M.D., Director Division of Injury Epidemiology and Control, Center for Environmental Health and Injury Control, CDC, Atlanta, Georgia 30333. Telephones: FTS 236-4690, Commerical (404) 454-4690.

**Elvin Hilyer,**

*Associate Director for Policy Coordination, Centers for Disease Control.*

[FR Doc. 29315 Filed 12-21-88; 8:45 am]

BILLING CODE 4160-18-M

## Health Resources and Services Administration

### Advisory Council; Rechartering

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463 (5 U.S.C. Appendix II), the Health Resources and Service Administration announces the rechartering by the Secretary, HHS, of the following Council.

| Council | Termination date |
|---|---|
| Advisory Council on Nurses Education. | Continuing. |

The Nursing Shortage Reduction and Education Act of 1988 changed the name of the Council from National Advisory Council on Nurse Training to the Advisory Council on Nurses Education and increased the membership by two; one from practicing nurses and one from representatives of associate degree schools of nursing.

Authority for this Council is continuing and a Charter will be filed no later than November 30, 1990, in accordance with section 14(b)(2) of Pub. L. 93-462.

Dated: December 16, 1988.

**Jackie E. Baum,**

*Advisory Committee Management Officer, HRSA.*

[FR Doc. 88-29384 Filed 12-21-88; 8:45 am]

BILLING CODE 4160-15-M

## National Vaccine Injury Compensation Program; List of Petitions Received

**AGENCY:** Public Health Service, HHS.

**ACTION:** Notice.

**SUMMARY:** The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

**FOR FURTHER INFORMATION CONTACT:** For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place, NW. Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

**SUPPLEMENTARY INFORMATION:**

The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq., provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the table and for conditions that are manifested after the time periods specified in the table, but only if the

petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS through December 8, 1988. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following, which quote the statute:

1. Any allegation in a petition that the petitioner either;

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the table and

2. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading **"FOR FURTHER INFORMATION CONTACT"**), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Room 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

**List of Petitions Received**

1. Charles and Nancy Hulsey on Behalf of Wesley Hulsey, Sierra Vista, Arizona, Claims Court Docket Number 88-46-V.

2. Lisa S. Reddish on Behalf of Christopher Reddish, Orlando, Florida, Claims Court Docket Number 88-47-V.

3. Gary G. Bunting on Behalf of Bradley Bunting, Duval County, Florida, Claims Court Docket Number 88-48-V.

4. Ida Showkeir on Behalf of Jamey Showkeir, Grand Blanc, Michigan, Claims Court Docket Number 88-49-V.

5. Eileen Lucarelli on Behalf of Dawn Lucarelli, Chesapeake, Virginia, Claims Court Docket Number 88-50-V.

6. Henry J. Beck on Behalf of Amanda Beck, Round Lake Beach, Illinois, Claims Court Docket Number 88-51-V.

7. Barbara M. Lakey on Behalf of Courtney Lakey, Portsmouth, Virginia, Claims Court Docket Number 88-52-V.

8. Esmeralda and Luis Reyna, Jr. on Behalf of Luis Reyna III, Harlingen, Texas, Claims Court Docket Number 88-53-V.

9. Robert and Roma Shepherd on Behalf of Heather Shepherd, North Miami Beach, Florida, Claims Court Docket Number 88-54-V.

10. Cheryl D. and Troy B. Seagraves on Behalf of Tori Seagraves, Keystone Heights, Florida, Claims Court Docket Number 88-55-V.

11. Guy R. Bailey on Behalf of Beth Bailey, Westbrook, Maine, Claims Court Docket Number 88-56-V.

12. William and Jeannette Gowan on Behalf of Cameron Gowan, Escalon, Georgia, Claims Court Docket Number 88-57-V.

13. Mario and Christy Tafoya on Behalf of Andre Tafoya, Joliet, Illinois, Claims Court Docket Number 88-58-V.

14. Anthony and Janet Ciotoli on Behalf of Richard Ciotoli, Endicott, New York, Claims Court Docket Number 88-59-V.

15. Larry and Jayne Younginger on Behalf of Lance Younginger, Darlington, South Carolina, Claims Court Docket Number 88-60-V.

16. Teresa Pollard on Behalf of Kimberly Pollard, Fayetteville, Georgia, Claims Court Docket Number 88-61-V.

17. Sidney and Jeanne MacWithey on Behalf of JeTaime MacWittey, Orlando, Florida, Claims Court Docket Number 88-62-V.

18. Stephen and Deborah Pusateri on Behalf of Stephen Pusateri II, Baltimore, Maryland, Claims Court Docket Number 88-63-V.

19. Florin Ionescu on Behalf of Mary J. Ionescu, San Antonio, Texas, Claims Court Docket Number 88-64-V.

20. Alfredo and Julie Torres on Behalf of Rebecca Torres, Woodstock, Illinois, Claims Court Docket Number 88-65-V.

21. Christine Watkins on Behalf of Cassidy Watkins, Tampa, Florida, Claims Court Docket Number 88-66-V.

22. Beverly Newton on Behalf of Michael Donnelly, Tempe, Arizona, Claims Court Docket Number 88-67-V.

23. Jack and Jane Siegfried on Behalf of Mary A. Siegfried, Fresno, California, Claims Court Docket Number 88-68-V.

24. Janet Manley on Behalf of Lee Ann Manley, Wayland, Massachusetts, Claims Court Docket Number 88-69-V.

Dated: December 16, 1988.

**John H. Kelso,**

*Acting Administrator.*

[FR Doc. 88-29385 Filed 12-21-88; 8:45 am]

BILLING CODE 4160-15-M

## DEPARTMENT OF THE INTERIOR

### Office of the Secretary

### Debt Collection Policies and Procedures

**AGENCY:** Department of the Interior.

**ACTION:** Notice of proposed changes in offset procedures.

**SUMMARY:** The Department of the Interior is proposing changes in its debt collection procedures to include referral of debts to the Internal Revenue Service for tax refund offset as authorized by the Deficit Reduction Act of 1984 (31 U.S.C. 3720A), and requesting public comment on the procedures.

**DATE:** Comments must be received at the following address by January 23, 1989.

**ADDRESS:** Comments should be addressed to William L. Kendig, Director, Office of Financial Management, Department of the Interior, MS 7258, 18th and C Streets, NW., Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** John Merrell, Office of Financial Management, (202) 343-5223.

**SUPPLEMENTARY INFORMATION:** On December 3, 1984, the Department of the Interior released a Departmental Manual part on debt collection, 344 DM., as required by the Debt Collection Act of 1982, (31 U.S.C. 3716). On March 1, 1985, the Department announced in the **Federal Register** that copies of the 344 DM were available to the public (50 FR 8400).

This notice proposes changes to the Department's procedural debt collection regulations by adding Chapter 12 establishing procedures to cover the referral of debt to the Internal Revenue Service for collection by offset against a taxpayer's Federal income tax refund. Following consideration of comments received, the Department will release a revised Departmental Manual Part 344 which will include Chapter 12 and publish the chapter in the **Federal Register.**

Copies of the current Departmental Manual part on debt collection (344 DM, Chapters 1-11) are available to the public. Copies may be obtained by contacting the Printing and Publications Division, Office of the Secretary, at the following address: Department of the Interior, Room 1307, 18th and C Streets,

NW., Washington, DC 20240. The text of Chapter 12, follows.

William L. Kendig,

*Director, Office of Financial Management.*

**12.1 Collection by Offset of a Debtors Federal Tax Refund**

*A. Scope.*

These guidelines establish procedures for the use of tax refund offset under 31 U.S.C. 3720A which authorizes the Internal Revenue Service (IRS) to reduce a tax refund by the amount of a past-due legally enforceable debt owned to the United States.

(1) For the purpose of this action, a past-due legally enforceable debt referable to the IRS is:

(a) No older than 9 years, 11 months as of January 1, of the tax refund year (except in the case of judgment debt).

(b) Not currently being collected by other collection methods.

(c) Not in bankruptcy under Title 11 of the United States Code.

(d) Under the requirements of 31 U.S.C. 3720A and Treasury Regulation 301.6402–6T relating to the eligibility of a debt for tax refund.

**12.2 Administrative Charges**

Bureaus will increase the amount of the debt (offset) by the amount of the administrative costs incurred in connection with the referral of the debt to the IRS.

**12.3 Notice of Offset**

Bureaus must inform the debtor of their intent to recover the debt due by tax refund offset (see 31 U.S.C. 3720A (b)). A notice must be sent to the debtor at least 60 calendar days prior to referral to the IRS, with a mailing address for forwarding any written correspondence, a contact name, and a phone number for any questions. The notice must state:

(1) The nature and amount of debt.

(2) That unless the debt is repaid within 60 days from the date of the notice, the bureau intends to collect the debt by requesting offset of the debtor's tax refund by the IRS.

(3) That the debtor has a right to inspect the bureau records related to the claim.

(4) That the debtor has a right to a review of and, if applicable, a hearing on the claim (see paragraph 12.4).

(5) That the debtor has an opportunity to enter into a repayment agreement with the bureau to repay the debt.

**12.4 Review Within the Department**

The debtor may request, within 60 calendar days after receipt of the bureau's written notice specified in 12.3, a review with the appropriate bureau as to the existence, the amount of the debt, or terms of repayment. The form of the review, including the need for an oral hearing, will be determined in accordance with 4 CFR 102.3(c). The review will be conducted by a designated bureau official not involved in the collection of the debt for which the offset is proposed. The official may determine that no debt is due, the amount of the debt should be reduced, terms of repayment through installments should be set, or the amount should be paid in full (see 344 DM 4.1A for guidance on compromise). The official may negotiate with the debtor concerning a written agreement for the repayment of the debt which is satisfactory to the debtor and the bureau.

**12.5 Offset**

If no written agreement is executed, the debtor does not request a review with the bureau, or the official who conducted the review determines that a debt is due, the IRS offset against the debtor's tax refund will be executed.

**12.6 Insufficient Tax Refund**

If a tax refund is insufficient to satisfy a debt in a given tax year, the bureau will refer the debt to the IRS on the following year to collect further on the debt. If in the following year, the debt has become legally unenforceable because of the lapse of the statute of limitations, the debt will be reported to the IRS on Form 1099G.

**12.7 Time Limitation**

A bureau may not initiate offset of tax refunds on a debt for which authority to collect arises under 31 U.S.C. 3716 more than 10 years after the bureau's right to collect the debt accured, unless facts material to the bureau's right to collect the debt were not known and could not reasonably have been known by the officials of the bureau responsible.

[FR Doc. 88–29263 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–RK–M

## Bureau of Land Management

### Closure Order; Atlas Superfund Site

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Approximately 200 acres of public lands disturbed by the abandoned Atlas asbestos mine and mill, within Fresno County, in the Hollister Resource Area, Bakersfield District, California, are hereby closed to entry and all public use.

**SUMMARY:** All public lands disturbed by the mining operation as indicated below (with the exception of that portion of the White Creek Road lying between the high tensile fences that have been constructed to form a travel corridor on both sides of the road) are hereby closed to all public entry and use. This closure is in effect on all of the public lands described below (A map depicting the closure can be viewed at the Hollister Resource Area Office):

Sections 29, 30, 31, and 32, T.18S., R.13E., M.D.M.

Section 25, T.18S., R.12E., M.D.M.

**SUPPLEMENTARY INFORMATION:** This order is necessary for the protection of public health. Soils on the mine site contain high concentrations of asbestos fibers. Inhaling asbestos fibers is known to increase the risk of lung cancer and other respiratory diseases. When the surface of the mine site is disturbed by vehicle or foot traffic, a fine powdered dust containing asbestos fibers is released into the air. Because of health hazards associated with asbestos this site has been placed on the Environmental Protection Agency's National Priorities List (Superfund). The entire perimeter of the mine site has been posted with closed area/asbestos warning signs at 150 feet intervals. The White Creek Road, which bisects the mine site, will remain open to public use. An 8-foot high-tensile fence has been constructed on both sides of the White Creek Road to define that area within the road right-of-way where public use is permitted. This closure is issued under the authority of 43 CFR 8364.1. Any person who fails to comply with this closure order shall be subject to the penalties provided in 43 CFR 8360.0–7. Federal, State and County Employees and/or their contractors while in the performance of official duties requiring ingress and egress and individuals in possession of written authorization from the Hollister Resource Area Manager shall be exempt from this closure order.

**DATES:** This order is in effect December 22, 1988, and is in effect until the order is cancelled, amended, or replaced.

**FOR FURTHER INFORMATION CONTACT:** Robert E. Beehler, Area Manager, Hollister Resource Area, Bureau of Land Management, P.O. Box 365, Hollister, CA 95024; telephone 408–637–8183.

Dated: December 14, 1988.

Robert E. Beehler,

*Area Manager.*

[FR Doc. 88–29414 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–84–M

[NV-930-09-4212-11; Nev-057854 and Nev-058554]

## Opening Order; City of North Las Vegas, NV

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This notice provides for opening of certain lands for direct sale to the City of North Las Vegas, Nevada.

**EFFECTIVE DATE:** December 14, 1988.

**FOR FURTHER INFORMATION CONTACT:** Ben Collins, District Manager, Las Vegas District Office, Bureau of Land Management, P.O. Box 26569, Las Vegas, Nevada 89126 (702) 646-8800.

**SUPPLEMENTARY INFORMATION:** In the early 1960's title to 1,080 acres of public land was transferred to the City of North Las Vegas, Nevada pursuant to the Recreation and Public Purposes Act (43 CFR Part 869 through 869–4). By quitclaim deed executed November 22, 1988, the following described 1,080 acres were reconveyed to the United States as the City of North Las Vegas, Nevada would now like to acquire unrestricted title to the lands pursuant to section 203 of the Federal Land Policy and Management Act (43 U.S.C. 1713):

Mount Diablo Meridian, Nevada

T. 19 S., R. 61 E.,
Sec. 21, S½;
Sec. 28, all:
Sec. 33, N½ME¼, NW¼NW¼.

On December 14, 1988, the lands described above were opened only to disposal pursuant to section 203 of the Federal Land Policy and Management Act, for the purpose of consummating a noncompetitive sale to the City of North Las Vegas, Nevada, subject to any valid existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

The land will remain closed to all other forms of appropriation including the mining laws.

Edward F. Spang,

*State Director, Nevada.*

[FR Doc. 88–29376 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-HC-M

[AZ-020-09-4212-12, Serial No. AZA-23606]

## Realty Action; Arizona; Correction

**SUMMARY:** The Notice of Realty Action published on Thursday, November 10, 1988, in **Federal Register** Volume 53, No. 218, page 45599, is hereby corrected as follows:

1. Page 45599, column 3, line 1 should read: Sec. 14, all.

2. Page 45599, column 3, line 21 should read: 3,266.34 acres.

3. Page 45599, column 3, line 28 should read: T. 18 N., R. 20 E.,

4. Page 45599, column 3, line 37 should read: T. 33 N., R. 12 W., Sec. 32, all.

5. Page 45599, column 3, line T. 38 should read: T., N., R. 13 W.,

6. Page 45599, column 3, line 45 should read: 4,194.40 acres.

Date: December 15, 1988.

William T. Childress,

*District Manager (Acting), Bureau of Land Management.*

[FR Doc. 88–29378 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-66-M

[AZ-920-09-4212-13; A-23217]

## Exchange of Public and Private Mineral Estates in La Paz, Mohave, and Yavapai Counties; AZ

December 16, 1988.

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of exchange of mineral estates.

**SUMMARY:** This action informs the public of the completion of a mineral estate exchange between the United States and Santa Fe Pacific Railroad Company, and delineates administration of the mineral estate conveyed to the United States.

**FOR FURTHER INFORMATION CONTACT:** John Gaudio, Bureau of Land Management, Arizona State Office, P.O. Box 16563, Phoenix, Arizona 85011. Telephone (602) 241–5534.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that the mineral estate in the following described 135,728.11 acres of land has been transferred out of Federal ownership pursuant to section 206 of the Federal Land Policy and Management Act of 1976:

Gila and Salt River Meridian, Arizona

T. 10 N., R. 6 W.,
Sec. 4, lot 1, SE¼NE¼, S½;
Sec. 5, S½;
Sec. 6, lots 1, 2, 3, 5, 6, and 7, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 9, N½, SW¼;
Sec. 17, all;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, N½NE¼, SW¼NE¼, NW¼;
Sec. 21, NE¼.
T. 10 N., R. 7 W.,
Sec. 3, lots 1 to 12, incl., S½SW¼, SE¼;
Sec. 4, lot 1 and lots 5 to 9, incl., SW¼, S½ SE¼;
Sec. 9, all;
Sec. 10, N½, SW¼;
Sec. 12, E½;
Sec. 13, NE¼, S½;
Sec. 14, SE¼;
Sec. 23, NE¼, S½;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 33, all;
Sec. 35, all.
T. 10 N., R. 8 W.,
Sec. 2, lots 1 to 4, incl., S½N½, S½;
Sec. 11, all.
T. 11 N., R. 5 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 6, incl., S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½;
Sec. 8, N½, SW¼;
Sec. 18, lots 1 to 4, incl., E½;
Sec. 19, lots 1 to 4, incl., E½;
Sec. 20, lots 1 and 2, W½NW¼, SW¼, NW¼SE¼;
Sec. 21, lots 5 to 8, incl., lot 12;
Sec. 28, lot 3;
Sec. 29, lots 1 and 2, S½NE¼;
Sec. 30, lots 1 to 4, incl.;
Sec. 31, lots 1 to 4, incl., E½;
Sec. 34, SW¼, N½SE¼.
T. 11 N., R. 6 W.,
Sec. 1, lots 1 to 8, incl., S½N½, S½;
Sec. 3, lots 1 to 8, incl., S½N½, S½;
Sec. 4, lots 1 to 21, incl., S½NE¼, SE¼ NW¼, E½SW¼, SE¼;
Sec. 9, lots 2 to 5, incl., lots 8 to 11, incl.;
Sec. 10, E½, E½W½;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 15, all;
Sec. 22, lots 1 to 12, incl., E½, E½W½;
Sec. 23, all;
Sec. 24, all;
Sec. 25, all;
Sec. 26, all;
Sec. 27, lots 1 to 12, incl., NE¼, E½NW¼, NE¼SW¼, E½SE¼, NW¼SE¼;
Sec. 30, lots 5, 10, 18, and 19;
Sec. 31, lots 5 to 14, incl., lots 16 and 17, SE¼SE¼.
T. 11 N., R. 7 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 8, all;
Sec. 11, W½;
Sec. 13, all;
Sec. 17, all;
Sec. 18, lots 1, 3, and 4, E½, E½W½;
Sec. 19, lots 1 to 7, incl., NE¼, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 20, lots 1 to 4, incl., N½, N½S½;
Sec. 21, N½;
Sec. 23, lots 1 to 9, incl., NW¼NW¼, W½ SW¼, SE¼;
Sec. 27, lots 1 to 11, incl., NW¼;
Sec. 34, lots 1, 2, 9, 10, and 12.
T. 11 N., R. 8 W.,
Sec. 1, lots 1 to 7, incl., SW¼NE¼, S½ NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, lots 1 to 4, incl., W½E½, W½;

Sec. 13, lots 1, 2, and 4, W½E½, W½;
Sec. 14, all;
Sec. 15, all;
Sec. 22, all;
Sec. 35, all.
T. 12 N., R. 6 W.,
Sec. 1, lots 1 to 4, incl., S½;
Sec. 2, lots 1 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lot 1, lots 4 to 14, incl., SE¼;
Sec. 7, lots to 16, incl., E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, N½;
Sec. 13, S½;
Sec. 18, lots 1 to 16, incl., E½;
Sec. 19, lots 1 to 8, incl., NE½;
Sec. 30, E½NE¼, NE¼SE¼, SW¼SE¼.
T. 12 N., R. 7 W.,
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25, W½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 33, all;
Sec. 34, all;
Sec. 35, W½SW¼.
T. 12 N., R. 8 W.,
Sec. 3, lots 1 to 4, incl., S½;
Sec. 4, lot 4, S½.
Sec. 5, lots 1 to 4, incl., S½;
Sec. 6, lots 1 to 4, incl., E½SE¼;
Sec. 8, N½, SE¼;
Sec. 9, E½, SE½NW½;
Sec. 10, all;
Sec. 11, all;
Sec. 12, NE¼, NE¼NW¼, SW¼NW¼, SW¼, E½SE¼, SW¼SE¼;
Sec. 17, E½;
Sec. 18, lots 1 to 8, incl.,
Sec. 19, lots 1 to 8, incl.,
Sec. 20, E½E½;
Sec. 29, W½;
Sec. 30, lots 1 to 8, incl.,
Sec. 31, lots 1 to 8, incl.,
T. 12 N., R. 9 W.,
Sec. 4, lots 1 to 4, incl., S½;
Sec. 9, all;
Sec. 10, NW¼;
Sec. 12, all;
Sec. 13, all;
Sec. 23, N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 24, all;
Sec. 25, all;
T. 13 N., R. 4 W.,
Sec. 5, lots 2 and 3, SW¼NE¼, SE¼NW¼.
T. 13 N., R. 5 W.,
Sec. 1, lots 2 to 4, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, E½SW¼, NW¼SW¼, SE¼;
Sec. 4, lots 1 to 4, incl., S½N½, N½S½, SW¼SW¼;
Sec. 10, NE¼, E½NW¼, S½;
Sec. 11, N½, N½S½;
Sec. 12, W½NE¼, NW¼, N½SW¼;
Sec. 13, all;
Sec. 14, E½, E½NW¼, NE¼W¼;
Sec. 15, N½, N½SW¼, SW¼SW¼, NW¼SE¼;
Sec. 23, NE¼;
Sec. 24, N½, N¼SW¼, SE¼.
T. 13 N., R. 6 W.,
Sec. 5, lots 15 and 16.
T. 13 N., R. 7 W.,
Sec. 25, SE¼SE¼.
T. 13 N., R. 8 W.,
Sec. 12, S½NE¼, NW¼NW¼, SW¼SW¼, SE¼;
Sec. 14, SW¼NW¼, S½;
Sec. 23, N½NE¼;
Sec. 26, NE¼, S½;
Sec. 31, lots 2 to 4, incl., S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 35, all.
T. 13 N., R. 9 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 17, NW¼;
Sec. 18, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 20, E½, E½NW¼, S½SW¼;
Sec. 21, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½.
T. 14 N., R. 4 W.,
Sec. 3, lot 1, S½NE¼, SE¼;
Sec. 10, E½, NE¼NW¼, S½NW¼, SW¼;
Sec. 15, all;
Sec. 22, E½.
Sec. 23, lot 7;
Sec. 24, lots 1, 2, 3, and 6, W½SE¼;
Sec. 25, W½W½;
Sec. 26, lots 2, 3, 6, 7, and 8, SE¼SW¼, S½SE¼;
Sec. 35, lots 1 to 9.
T. 14 N., R. 5 W.,
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½;
Sec. 31, lots 1 to 6, incl., NE¼, N½SE¼;
Sec. 33, lots 1 to 4, incl., N½, N½S½;
Sec. 34, lots 1 to 4, incl., N½, N½S½;
Sec. 35, 1 to 4, incl., N½, N½S½.
T. 14 N., R. 6 W.,
Sec. 4, lots 1 to 4, incl., S½N½;
Sec. 5, lots 1 and 2;
Sec. 9, all;
Sec. 24, SW¼.
T. 14 N., R. 9 W.,
Sec. 21, SE¼NE¼, S½;
Sec. 25, all;
Sec. 26, E½;
Sec. 27, W½;
Sec. 28, all;
Sec. 29, E½;
Sec. 33, all;
Sec. 34, N½, SW¼;
Sec. 35, all.
T. 14½ N., R. 6 W.,
Sec. 21, lots 1 to 4, incl., S½.
T. 14½ N., R. 8 W.,
Sec. 26, NE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all.
T. 15 N., R. 6 W.,
Sec. 30, lots 1 to 4, incl., W½NE¼, SE¼;
Sec. 31, lots 1 to 4, incl., E½.
T. 15 N., R. 7 W.,
Sec. 5, lots 1 to 4, incl., S½N½, SW¼;
Sec. 17, all;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 34, all.
T. 15 N., R. 8 W.,
Sec. 12, N½SW¼;
Sec. 14, NE¼SW¼, S½SW¼, SE¼SE¼;
Sec. 21, all;
Sec. 22, NW¼NW¼;
Sec. 23, NE¼, E½SE¼;
Sec. 24, SW¼NW¼, W½SW¼;
Sec. 25, NW¼NW¼;
Sec. 26, N½N½, SW¼NE¼, S½NW¼;
Sec. 27, NE¼NE¼, S½NE¼, SE¼;
Sec. 28, N½, SW¼, N½SE¼, SW¼SE¼;
Sec. 33, NW¼NW¼, N½SW¼;
Sec. 35, all.
T. 15 N., R. 9 W.,
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 4, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 6, lots 1 to 7, incl., S½NE¼, SE¼NW¼, E½SW¼, NE¼SE¼, S½SE¼;
Sec. 8, all;
Sec. 9, E½NE¼, SW¼NE¼, W½, SE¼;
Sec. 10, all;
Sec. 11, all;
Sec. 17, N½, N½SE¼, SW¼SE¼;
Sec. 22, all;
Sec. 23, W½NE¼, SE¼NE¼, W½.
T. 16 N., R. 9 W.,
Sec. 1, lots 1 to 4, incl., S½N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 10, N½, N½S½, SW¼SW¼, S½SE¼;
Sec. 11, all;
Sec. 12, all;
Sec. 14, all;
Sec. 15, all;
Sec. 17, all;
Sec. 20, N½, N½S½, S½SW¼, SW¼SE¼;
Sec. 21, all;
Sec. 22, all;
Sec. 23, N½, SW¼, SW¼SE¼;
Sec. 24, N½, E½SW¼, SW¼SW¼, SE¼;
Sec. 25, NE¼, S½;
Sec. 26, NW¼NE¼, S½NE¼, NW¼, NE¼SW¼, S½SW¼, SE¼;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 31, E½, E½W½;
Sec. 33, all;
Sec. 34, all;
Sec. 35, all;

In exchange, the mineral estate in 135,762.68 acres of land has been conveyed to the United States. The mineral estate conveyed to the United States in the following described lands is being administered by the National Service as part of Grand Canyon

Nationa Park and/or Lake Mead National Recreation Area:

**Gila and Salt River Meridian, Arizona**

T. 29 N., R. 11 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
T. 30 N., R. 11 W.,
Sec. 9, all;
Sec. 11, all;
Sec. 23, all;
Sec. 27, all;
T. 30 N., R. 15 W.,
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, lots 1 to 4, incl.;
Sec. 17, all;
Sec. 19, NE¼, that portion within Grand Canyon National Park (GCNP) and/or Lake Mead National Recreation Area (LMNRA);
Sec. 21, lots 1 to 4, incl., that portion within GCNP and/or LMNRA.
T. 30 N., R. 16 W.,
Sec. 11, N½, E½SE¼, that portion within GCNP and/or LMNRA;
Sec. 13, N½, SE¼, that portion within GCNP and/or NMNRA.
T. 31 N., R. 11 W.,
Sec. 17, all;
Sec. 21, all;
Sec. 25, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all;
T. 31 N., R. 12 W.,
Sec. 9, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 23, all;
Sec. 25, all;
Sec. 35, all;
T. 31 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½, that portion within GCNP and/or LMNRA;
Sec. 7, lots 1 to 4, incl., E½, E½W½, that portion within GCNP and/or LMNRA;
Sec. 25, all;
T. 31 N., R. 15 W.,
Sec. 31, all;
Sec. 33, lots 1 to 4, incl.

The mineral estate conveyed to the United States in the following described land is being administered by the U.S. Fish and Wildlife Service as part of Havasu National Wildlife Refuge:

**Gila and Salt River Meridian, Arizona**

T. 14 N., R. 20½ W.,
Sec. 1, NE¼, E½NW¼, N½NW¼NW¼, SE¼NW¼NW¼, N½N½SE¼.
T. 15 N., R. 20 W.,
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
T. 15 N., R. 20½ W.,
Sec. 1, all;
Sec. 3, lots 1 and 2, N½ and SE¼ of lot 3, E½E½;
Sec. 11, all;
Sec. 13, all;
Sec. 23, east 20 acres of lot 1, NE¼, E½NW¼, NE¼NE¼SW¼, N½SE¼, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼;
Sec. 25, E½, N½NW¼, N½S½NW¼, SE¼SE¼NW¼, E½E½SW¼;
Sec. 35, N½SW¼SE¼, SE¼SW¼SE¼, SE¼SE¼.
T. 15 N., R. 21 W.,
Sec. 1, S½;
Sec. 13, NE 10 acres of lot 2, NE¼, NE¼NW¼, NE¼SE¼, E½NW¼SE¼, E½SE¼SE¼, SW¼SE¼SE¼.
T. 16 N., R. 20 W.,
Sec. 31, lots 1 to 4, incl., E½W½, E½;
T. 16 N., R. 20½ N.,
Sec. 35, N½, SE¼.

The mineral estate conveyed to the United States in the remaining following described land, most of which is within twelve wilderness study areas, will be administered by the Bureau of Land Management for its public values:

**Gila and Salt River Meridian, Arizona**

T. 10 N., R. 15 W.,
Sec. 5, W½, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all.
T. 10 N., R. 16 W.,
Sec. 1, N½N½, S½S½;
Sec. 3, all;
Sec. 11, all.
T. 10 N., R 17 W.,
Sec. 13, NW¼NE¼, S½NE¼, W½, SE¼;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, E½, E½NW¼, SW¼NW¼, SW¼;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
Sec. 33, all;
Sec. 35, all.
T. 10 N., R. 18 W.,
Sec. 3, lots 1, to 4, incl., S½N½, S½;
Sec. 9, NE¼, E½SE¼;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.
T. 11 N., R. 15 W.,
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 11 N., R. 16 W.,
Sec. 25, N½, NW¼SW¼, NE¼SE¼.
T. 11 N., R. 18 W.,
Sec. 35, all.
T 12 N., R. 13 W.,
Sec. 5, lots 1 to 4, incl., S½.
Sec. 7, lots 1 to 4, incl., SE¼NW¼, E½SW¼, SE¼;
Sec. 9, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 29, NE¼, E½NW¼.
T. 12 N., R. 14 W.,
Sec. 1, lots 2 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, E½, E½NW¼;
Sec. 35, all.
T. 12 N., R. 15 W.,
Sec. 1, lots 1 to 4, incl., S½;
Sec. 3, lots 1 to 4, incl., S½;
Sec. 5, lots 1 to 4, incl., S½;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, SW¼NE¼, SE¼SW¼, SE¼;
Sec. 27, all;
Sec. 29, all.
T. 13 N., R. 12 W.,
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½.
T. 13 N., R. 13 W.,
Sec. 11, S½;
Sec. 13, all;
Sec. 15, all;
Sec. 23, all;
Sec. 25, all;
Sec. 33, SE¼;
Sec. 35, all.
T. 13 N., R. 14 W.,
Sec. 27, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 13 N., R. 15 W.,
Sec. 27, all;
Sec. 33, all;
Sec. 35, all.
T. 14 N., R. 12 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 11, N½, N½W¼, SE¼SW¼, SE¼.
T. 14 N., R. 18 W.,
Sec. 25, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 14 N., R. 19 W.,
Sec. 3, lots 1 to 4, incl., S½N½, SE¼;
Sec. 5, lots 1 and 2, S½NE¼, SE¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½.
T. 15 N., R. 12 W.,
Sec. 35, all.
T. 15 N., R. 18 W.,
Sec. 29, all;
Sec. 31, lots 1 and 2, E½, E½NW¼;
Sec. 33, all.
T. 15 N., R. 21 W.,
Sec. 1, N½.
T. 16½ N., R. 19 W.,
Sec. 21, lots 1 to 4, incl., S½N½, S½;
Sec. 23, lots 1 to 4, incl., S½N½, S½;
Sec. 27, all;
Sec. 33, all.
T. 17 N., R. 16 W.,

Sec. 5, lots 1 to 4, incl., S½N½, S½.
T. 17 N., R. 20 W.,
Sec. 1, lots 1 to 7, incl., SW¼NE¼, S½NW¼, SW¼, W½SE¼;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 33, all;
Sec. 35, all;
T. 18 N., R. 16 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, S½SW¼;
Sec. 7, lots 1 to 4, incl., E½, E½W½;
Sec. 9, all;
Sec. 11, all;
Sec. 15, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 23, W½;
Sec. 27, N½, SW¼;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all.
T. 18 N., R. 17 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 13, all;
Sec. 23, all;
Sec. 25, all.
T. 18 N., R. 20 W.,
Sec. 25, all;
Sec. 33, all;
Sec. 35, all.
T. 19 N., R. 16 W.,
Sec. 9, all;
Sec. 17, all;
Sec. 19, lots 1 to 4, incl., E½, E½W½;
Sec. 21, all;
Sec. 25, E½SE¼;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 19 N., R. 17 W.,
Sec. 13, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 35, all.
T. 19 N., R. 20 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½.
T. 20 N., R. 20 W.,
Sec. 11, all;
Sec. 13, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, SE¼SE¼;
Sec. 35, lots 1 and 2, NE¼NE¼, W½E½, W½, SE¼SE¼.
T. 24 N., R. 18 W.,
Sec. 5, lots 1 to 4 incl., S½;
Sec. 7, NE¼, E½NW¼;
Sec. 9, all.
T. 25 N., R. 17 W.,
Sec. 31, lots 3 and 4, E½SW¼, SE¼.
T. 25 N., R. 18 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 3, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½;
Sec. 9, all;
Sec. 11, all;
Sec. 13, all;
Sec. 15, all;
Sec. 17, all;
Sec. 21, all;
Sec. 23, all;
Sec. 25, all;
Sec. 27, all;
Sec. 29, all;
Sec. 31, lots 1 to 4, incl., E½, E½W½;
Sec. 33, all;
Sec. 35, all.
T. 30 N., R. 15 E.,
Sec. 19, NE¼, that portion lying outside of GCNP and/or LMNRA;
Sec. 21, lots 1 to 4, incl., that portion lying outside of GCNP and/or LMNRA.
T. 30 N., R. 16 W.,
Sec. 11, N½, E½SE¼, that portion lying outside of GCNP and/or LMNRA;
Sec. 13, N½, SE¼, that portion lying outside of GCNP and/or LMNRA.
T. 31 N., R. 13 W.,
Sec. 1, lots 1 to 4, incl., S½N½, S½;
Sec. 5, lots 1 to 4, incl., S½N½, S½, that portion lying outside of GCNP and/or LMNRA;
Sec. 7, lots 1 to 4, incl., E½, E½W½, that portion lying outside of GCNP and/or LMNRA;
Sec. 25, all.

The purpose of this Notice is to inform the public and interested state and local government officials of this exchange of public and private mineral estates, and to outline administration of the mineral estate conveyed to the United States.

**John T. Mezes,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 88-29420 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-32-M

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**[CO-010-09-4212-13; COC-45800]**

## Exchange of Public Lands in Jackson and Grand Counties; CO

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Correction notice.

**SUMMARY:** This notice corrects an error in the legal description of public lands proposed to be exchanged for nonfederal land.

**FOR FURTHER INFORMATION CONTACT:** Additional information concerning this exchange, including the planning documents and environmental assessment, is available for review in the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459.

**SUPPLEMENTARY INFORMATION:** In **Federal Register** Document 88-27706 on pages 48589-48590 in the issue of Thursday, December 1, 1988, under T. 5 N., R. 81 W., section 9, lot 15 is corrected to read lot 7, containing 44.57 acres.

**David C. Nylander,**

*Acting District Manager.*

[FR Doc. 88-29418 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-JB-M

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**[ID-060-09-4212-13; I-26370]**

## Coeur d'Alene District, Idaho County, ID; Exchange of Public Lands

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice of realty action; exchange of public lands in Idaho County, Idaho.

**SUMMARY:** The following described public lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716:

**Boise Principal Meridian, Idaho**

T. 29 N., R. 3 E.
Sec. 6, SE¼SW¼
T. 30 N. R. 4 E.
Sec. 19, Lots 9 and 10.
Containing 117.95 acres in Idaho County.

In exchange for these lands, the United States will acquire the following described lands from FLEX Northwest, Inc.:

**Boise Principal Meridian, Idaho**

T. 31 N., R. 2 W.
Sec. 7, lots 4 and 5.
Containing 79.30 acres in Lewis County.

The purpose of the exchange is to obtain non-federal lands for use in Federal recreation programs in the vicinity of the Lower Salmon River. The exchange is consistent with the Bureau's planning for the involved lands. The public interest will be well served by making the exchange. The values of the lands to be exchanged are approximately equal and the acreage will be adjusted or money will be used to equalize values upon completion of the final appraisal of the lands. The exchange involves both the surface and mineral estates.

Lands to be conveyed from the United States will be subject to the following terms and conditions:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All other valid existing rights, including but not limited to any right-of-way, easement or lease of record.

Publication of this notice segregates the public lands from the operation of the public land laws, including the mining laws, for a period of two years from the date of publication.

Additional information about the exchange is available for review at the Bureau of Land Management Office, Route 3, Box 181, Cottonwood, Idaho 83522.

**SUPPLEMENTARY INFORMATION:** For a period of 45 days from the date of this notice, interested parties may submit comments or adverse claims to the Coeur d'Alene District Manager, 1808 North Third Street, Coeur d'Alene, Idaho 83814. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: December 15, 1988.

**John B. O'Brien III,**

*Acting District Manager.*

[FR Doc. 88-29379 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-66-M

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**[NV-930-09-4212-11; N-49859]**

## Realty Action; Bureau Motion Lease/ Purchase For Recreation and Public Purposes Nye County, NV

The following described public land near Lathrop Wells, Nye County, Nevada has been identified and examined and will be classified as potentially suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register** and the filing of an application by a qualified applicant.

Mount Diablo Meridian, Nevada

T. 15 S., R. 49 E.,
Section 13; N½,N½S½.

Aggregating 480 acres (gross)

This parcel of land contains approximately 480 acres. The lands are being classified for recreation and public purposes by the Bureau of Land Management in order to make the lands available for filing of an application by a qualified applicant under the Recreation and Public Purposes Act. Upon the filing of an application, the Bureau of Land Management will prepare the required documents which include Environmental Assessment/Land Report, cultural resources report/survey, and mineral report. A final determination of any application will not be made until completion of these reports. The lands have been identified for disposal in the Southern Nye/Esmeralda BLM Resource Management Plan. The lease and/or patent, if issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Nye County.

2. Those rights for telephone line purposes which have been granted to Continental Telephone by Permit No. CC-021488 under the Act of March 4, 1911.

3. Those rights for highway purposes which have been granted to State of Nevada, Department of Transportation by Permit No. CC-018078 under the Act of August 27, 1958.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area. The purpose of this notice is to merely classify the lands and is not authorization for any surface disturbing activities.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: December 12, 1988.

**Ben F. Collins,**

*District Manager, Las Vegas, NV*

[FR Doc. 88-29446 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-HC-M

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**[(OR-943-09-4214-11; GP9-065; OR-44047)]**

## Conveyance of Public Lands; Oregon

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** This action informs the public of the conveyance of 150.82 acres of public lands out of Federal ownership. The 154.79 acres of reconveyed land will not be opened to surface entry, mining and mineral leasing because it will be designated as an Outstanding Natural Area.

**EFFECTIVE DATE:** January 30, 1989.

**FOR FURTHER INFORMATION CONTACT:** Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon 97208, 503-231-6905.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 150.82 acres of lands in Lane County, Oregon, from Federal to private ownership.

In the exchange, the following described land has been reconveyed to the United States:

Willamette Meridian

T. 17 S., R. 3 E.,
sec. 10, lots 4 and 5, and SE¼NW¼.

Revested Oregon and California Railroad Grant Land

T. 17 S., R. 3 E.,
sec. 10, lot 3 and NW¼NW¼.

The area described contains 154.79 acres in Lane County.

The land will not be opened to operation of the public land laws, including the mining and mineral leasing laws because it will be designated as an Outstanding Natural Area.

Dated: December 14, 1988.

**B. LaVelle Black,**

*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 88-29410 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-33-M

[OR-050-4212-14:GP9-072]

## Prineville District, Oregon; Realty Action, Direct Sale of Public Land in Crook County, Oregon (OR 44610)

December 15, 1988.

**AGENCY:** Bureau of Land Management, Interior.

The following lands are suitable for sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713 and 1719, at no less than the appraised fair market value.

LEGAL DESCRIPTION

| T. 16 S., R. 16 E., W.M. | Tract | Acres |
|---|---|---|
| A. Sec. 14 SW¼NW¼ | 40 | 2.46 |
| B. Sec. 21 NE¼SW¼ | 41 | .47 |
| C. Sec. 21 NE¼SE¼ | 42 | 1.66 |
| D. Sec. 28 NW¼SE¼ | 44 | 3.03 |
| E. Sec. 28 SE¼SE¼ | 45 | 7.73 |
| F. Sec. 26 E½NW¼, NE¼SW¼, NW¼SE¼ | 43 | 10.66 |
| G. Sec. 35 E½E½ | 46 | 0.91 |
| | 47 | 0.26 |
| Total | | 27.29 |

The above described lands are hereby segregated from appropriation under the public land laws, including the mining laws, but not from sale under the above cited statute.

These (isolated) parcels are difficult and uneconomic to manage as part of the public lands and are not suitable for management by another Federal agency. No significant resource values will be affected by this disposal. The sale is consistent with BLM's planning for the land involved and the public interest will be served by offering this land for sale.

The tracts were established as a result of a dependent resurvey conducted by BLM Prineville District Office. The survey revealed discrepancies between section corners used in surveying the Prineville Lake Acres Unit II subdivision, and the original established corners.

By selling the eight tracts directly to the developer, Central Oregon Sun Country, Inc., the property would automatically be incorporated into each of the affected individual lots.

Direct sale procedures are being used since a competitive sale is not appropriate. The public interest would best be served by direct sale because the tracts are included within lots of the subdivision.

The tracts identified by Serial No. OR 38477 are being offered to the developer, Central Oregon Sun Country, Inc., using direct sale procedures authorized under 43 CFR 2711.3–3. The land will be sold at fair market value without competitive bidding.

The prospective purchaser is required to render a minimum deposit of 20% of the purchase price by January 30, 1989, and the balance within 180 days of the sale date.

### Terms and Conditions of the Sale

The terms, conditions and reservations applicable to the sale are as follows:

(1) All oil and gas interests in the lands will be reserved to the United States in accordance with section 209 of the Federal Land Policy and Management Act of 1976.

(2) Rights-of-way for ditches and canals will be reserved to the United States under 43 U.S.C. 945.

(3) The patent will be issued subject to all valid existing rights and reservations of record.

Further information concerning the sale including the environmental analysis and land report is available for review at the Prineville District Office, P.O. Box 550, Prineville, OR 97754.

For a period of 45 days after the date of issuance of this notice, the public and interested parties may submit comments to the Prineville District Manager at the above address. Any adverse comments received as a result of the Notice of Realty Action or notification to the Congressional delegation will be evaluated by the District Manager who may vacate or modify this realty action and issue a final determination. (In the absence of adverse comments this realty action will become a final determination of the Department of the Interior.)

Dated: December 15, 1988.

**Donald L. Smith,**

*Acting District Manager.*

[FR Doc. 88–29411 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-33-M

[U-62285, U-62294, U-62295, U-62296, U-62297, U-62298; UT-040-09-4212-14]

## Realty Action; Sale of Public Land in Iron County, UT

**AGENCY:** Department of the Interior, Bureau of Land Management.

**ACTION:** The Notice of Realty Action announcing a sale of public lands in Iron County, Utah, published in the **Federal Register**, Vol. 53, No. 230, Wednesday, November 30, 1988, pp. 48317–48318 is hereby amended to include the following statement:

"The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws. This segregation will remain effective pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first."

Date: December 14, 1988.

**Gordon Staker,**

*District Manager.*

[FR Doc. 88–29409 Filed 12–21–88; 8:45 am]

BILLING CODE 4310-DQ-M

[UT-060-09-4212-13]

## Final Decision on Plan Amendment; Grand Resource Area, Utah

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Final decision on plan amendment for Grand Resource Area Resource Management Plan.

**SUMMARY:** Notice is given to the public that the Bureau of Land Management has made a final decision to amend the Grand Resource Area Resource Management Plan. The plan amendment changes the lands management actions on page 22 with the following additions: "The following described public lands (shown on Figure 1) will be managed for disposal, only by exchange under FLPMA Section 206:

**Salt Lake Meridian, Utah**

T.24S., R.22E.,
Section 35, S½NE¼, N½N½SE¼, and N½S½N½SE¼.

The following described private lands (shown on Figure 2) will be acquired only by exchange under FLPMA Section 206:

**Salt Lake Meridian, Utah**

T.24S., R.23E.,
Section 2, Lots 2, 3, 4, 5, 8 and 9."

The minerals management action on page 27, paragraph 3 would be removed in its entirety and replaced with the following:

"Areas closed to mineral material disposal area:

1. Negro Bill ACEC
2. Mill Canyon Interpretive Site
3. Wilderness Study Areas (WSA). If the WSA is included in the Wilderness Preservation System it will remain closed to mineral material disposal. However, if it is not included, it will be open to applications for disposal of mineral material.
4. Mineral withdrawals
5. Oil and Gas leasing categories 3 and 4 with the exception of Fish Ford material site. The legal description for Fish Ford is:

**Salt Lake Meridian, Utah**

T.21S., R.24E.,

Section 34, S½SE¼;
Section 35, NW¼NW¼, S½NW¼, N½SW¼, SW¼SW¼.
T.22S., R.24E.,
Section 2, Lots 3, 4;
Section 3, Lots 1–5, 8, and 9, SW¼NW¼, W½SW¼.

These areas are identified on Figure 3. The rest of the resource area is open to mineral material disposal. NEPA documentation will determine whether a permit should be issued for a specific site within the area open for salable mineral disposal. If approved the NEPA documentation will determine appropriate stipulations for the site." The planning criteria on pages A–24, 25 (Lands Actions) would be changed by the following addition:

"The determination of suitability of lands for exchanges will be done in a site-specific environmental assessment. To be in conformance with the plan, an exchange must be shown to be in the public interest and meet the disposal and acquisition criteria below:

Lands selected for disposal *must be* suitable for disposal under criteria established by policy, law, or regulation:

—No mining claims of record under section 314 of FLPMA;
—Lands not encumbered by a withdrawal or other special designation;
—Lands with no known cultural resource sites suitable for national register designation;
—Lands which, because of their location or other characteristics, are difficult or uneconomic to manage as part of the public lands;
—Lands are not suitable for management by another Federal department or agency;
—Lands are not in flood areas or contain wetlands which preclude disposal.

The values of the acquisition must outweigh the values of the disposal:

—Acquisition of public lands to be managed by the BLM will meet program objectives for management of recreation resources, wilderness, cultural resources, wildlife habitat, riparian or wetland areas, or threatened or endangered species;
—The exchange will result in better Federal land management;
—Where possible, the exchange will provide access to public lands.

Acquisitions for the benefit of another Federal agency must be shown to be in the public interest.

**DATES:** For up to and including January 23, 1989, protests on the plan amendment may be filed. This decision will become final after the 30-day-period if no protests are received.

**ADDRESSES:** Protests on the plan amendment shall be sent to the Director, Bureau of Land Management, 18th and C Street NW., Washington, DC 20240. The environmental assessment prepared for the plan amendment is available at the Grand Resource Area, P.O. Box M, Sand Flats Road, Moab, Utah 84532, phone: (801) 259–8193.

**FOR FURTHER INFORMATION CONTACT:** Mary von Koch, Grand Resource Area.

Dated: December 12, 1988.

**James M. Parker,**

*State Director.*

[FR Doc. 88–29387 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–DQ–M

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**[ID–942–09–4730–12]**

## Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a..m., December 12, 1988.

The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 20, T. 1 S., R. 4 E., Boise Meridian, Idaho, Group No. 764, was accepted November 30, 1988.

This survey was executed to meet certain administrative needs by this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

December 12, 1988.

**Duane E. Olsen,**

*Chief Cadastral Surveyor for Idaho.*

[FR Doc. 88–29412 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–GG–M

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**[CO–930–09–4214–10; COC 49195]**

## Proposed Withdrawal; Scheduled Public Meeting; Colorado

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** Notice.

**SUMMARY:** The U.S. Department of Agriculture, Forest Service, proposes to withdraw National Forest System land near Frisco, Colorado, for 20 years to protect recreational facilities and resource values at the Copper Mountain Ski Area. This notice closes this land to location and entry under the U.S. mining laws for two years. The land remains open to mineral leasing and to Forest Service management. This notice also establishes the time and place of a public meeting which has been scheduled as required by regulation to allow public involvement in this proposed action.

**DATES:** Comments on this proposed action must be received on or before March 22, 1989; requests to be heard at the public meeting must be received by February 7, 1989.

**ADDRESS:** Comments and/or requests to be heard should be submitted to the State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215.

MEETING DATE: The public meeting will be held on February 15, 1989, at 7:00 p.m. All requests to be heard should be received by close of business February 7, 1989, at the Colorado State Office. A list of scheduled speakers will be established. Unscheduled speakers will be heard if time allows.

MEETING ADDRESS: Frisco Town Hall, 1st and Main Streets, Frisco, Colorado 80443.

**FOR FURTHER INFORMATION CONTACT:** Doris E. Chelius, (303) 236–1768.

**SUPPLEMENTARY INFORMATION:** On November 18, 1988, the Department of Agriculture, Forest Service, filed application to withdraw the following described National Forest System land from location and entry under the mining laws, subject to valid existing rights:

**Sixth Principal Meridian**

*Arapaho National Forest*

T. 6S., R. 78 W.,
Sec. 20, SE¼SW¼SW¼, S½SE¼SW¼;
Sec. 29, W½SW¼NE¼, E½W½, E½W½NW¼ NE¼NW¼SW¼, S½NW¼SW¼, SW¼SW¼, SW¼SE¼, W½NW¼SE¼;
Sec. 30, S½ exclusive of Tract 37;
Sec. 31, All;
Sec. 32, W½E½, W½.
T. 7 S., R. 78 W. (Protraction Diagram No. 9, Accepted April 26, 1965),
Sec. 5, W½NE¼, NW¼, N½SW¼, SW¼SW¼, N½SE¼SW¼, SW¼SE¼ SW¼, W½NW¼SE¼, exclusive of patented lands;
Sec. 6, All exclusive of patented lands;
Sec. 7, NW¼, fractional E½NW¼, fractional N½NE¼SW¼, fractional NW¼NE¼SE¼, exclusive of Tract 50 and patented lands;
Sec. 8, NW¼NE¼NW¼, NW¼NW¼, NW¼SW¼NW¼.
T. 7 S., R. 79 W.,
Sec. 1, All;
Sec. 2, All;
Sec. 3, E½, E½NE¼SW¼, NE¼SE¼ SW¼;
Sec. 10, NE¼NE¼, NE¼NW¼NE¼, N½SE¼NE¼, SE¼SE¼NE¼;
Sec. 11, N½, N½NE¼SW¼, N½N½SE¼, exclusive of patented lands;

Sec. 12, N½, N½N½S½, exclusive of patented lands.
T. 6 S., R. 79 W.,
Sec. 25, SW¼SW¼NE¼, exclusive of Tract 38, S½NW¼, SW¼, SE¼ exclusive of Tract 38;
Sec. 26, S½, S½N½, NW¼NE¼, S½NE¼NE¼, NW¼NE¼NE¼, NE¼NW¼, W½NW¼NW¼, SE¼NW¼NW¼;
Sec. 27, E½NE¼NE¼, SE¼SE¼NE¼, SE¼SE¼SW¼, NE¼NE¼SE¼, S½NE¼SE¼, SE¼NW¼SE¼, S½SE¼;
Sec. 34, E¼, N½NE¼NW¼, SE¼NE¼ NW¼;
Sec. 35, All;
Sec. 36, All.

The area described aggregates approximately 7,699 acres of National Forest System land in Summit County.

The purpose of this proposed withdrawal is to protect recreational facilities and high resource values within the Copper Mountain Ski Aea.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with this proposal may present their views in writing to the undersigned officer of the Bureau of Land Management. However, those persons desiring to be heard at the public meeting must submit their requests by February 7, 1989.

This application will be processed in accordance with the regulations set forth in 43 CFR Part 2310.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to that date. During this period the Forest Service will continue to allow those descretionary uses that do not conflict with the ski area permit and use.

**Jenny L. Saunders,**

*Acting Chief, Branch of Realty Programs.*

[FR Doc. 88-29415 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-JB-M

## Minerals Management Service

### Development Operations Coordination Document; Chevron U.S.A. Inc.

**AGENCY:** Minerals Management Service.

**ACTION:** Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

**SUMMARY:** Notice is hereby given that Chevron U.S.A. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5345, Block 555, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Cameron, Louisiana.

**DATE:** The subject DOCD was deemed submitted on December 15, 1988. Comments must be received on or before January 6, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

**ADDRESSES:** A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

**FOR FURTHER INFORMATION CONTACT:** Mr. Emile H. Simoneaux, Jr.; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2872.

**SUPPLEMENTARY INFORMATION:** The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: December 15, 1988.

**J. Rogers Pearcy,**

*Regional Director, Gulf of Mexico OCS Region.*

[FR Doc. 88-29380 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-MR-M

## National Park Service

### Boundary Establishment, Descriptions, etc.; Sleeping Bear Dunes National Lakeshore, MI

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice of correction to boundary map.

The boundary of Sleeping Bear Dunes National Lakeshore, authorized October 21, 1970, 84 Stat. 1075, was revised in the **Federal Register**, January 4, 1985 (50 FR 552) to include approximately 115 acres pursuant to authority contained in the Act of June 10, 1977, 91 Stat. 211, as amended, 16 U.S.C. 460*l*-9(c).

It was originally intended that .30 acre of Tract 08-111 be deleted. However, the map drawn depicted the deletion of the entire tract. Map numbered 634-80050 dated June 1988 correctly depicts the boundary to reflect the deletion of only the .30-acre portion of the tract. The map is available to the public for inspection at the following addresses:

Director, National Park Service, 1100 L Street NW., P.O. Box 37127, Washington, DC 20013-7127
Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102
Superintendent, Sleeping Bear Dunes National Lakeshore, Box 277, 9922 Front Street, Empire, Michigan 49630

Date: August 3, 1988.

**Don H. Castleberry,**

*Regional Director, Midwest Region.*

[FR Doc. 88-29342 Filed 12-21-88; 8:45 am]

BILLING CODE 4310-70-M

### General Management Plan for Eugene O'Neill National Historic Site; Availability of Draft Environmental Impact Statement

**SUMMARY:** Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L. 91-190 as amended), the National Park Service, Department of the Interior, has prepared a draft environmental impact statement (DEIS) assessing the potential impacts of the proposed General Management Plan for Eugene O'Neill National Historic Site, Contra Costa County, California.

The draft Plan proposes the development of a public access road to the site, the development of additional

visitor use facilities, adaptive use of historic structures for administrative and visitor use purposes, removal of a non-historic structure, and adjustment of the Site's boundary to include the access road corridor and additional historic resources. Alternatives include no action, the development of an alternative access route, and retention and use of the non-historic building.

**DATES:** Written comments on the draft General Management Plan and DEIS will be accepted until March 15, 1989. Also, a public information session will be held January 18, 1989 at San Ramon Valley High School, located at 140 Love Lane, Danville. The session, to be held in Room R, will run from 4:00 p.m. until 9:00 p.m. Park Service officials will be available at this time to hand out materials on the Plan, receive written comments, and answer questions.

**ADDRESSES:** Inquiries on the DEIS should be directed to: Superintendent, Eugene O'Neill National Historic Site, 4202 Alhambra Avenue, Martinez, CA 94553. Telephone number (415) 228–8860.

Copies of the draft Plan and DEIS are available at the park headquarters in Martinez at the above address. Copies are also available for inspection at libraries located in the Site's vicinity.

Date: December 15, 1988.

**Stanley T. Albright,**

*Regional Director, Western Region.*

[FR Doc. 88–29343 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–70–M

## Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 10:30 a.m. (PDT) on Saturday, January 28, 1989, at the West Marin School, Point Reyes Station, California.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R.H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The main agenda items at this public meeting will be a Point Reyes Committee Report on amendments to the Range Management Guidelines and on a request for communications tower construction; a report on resource management projects at Point Reyes National Seashore including the exotic plant control plan; report on the status of the Drakes Beach Visitor Center planning; status report on the Limantour Comfort Station proposal; status report on other issues relating to Point Reyes National Seashore and the northern area of the Golden Gate National Recreation Area; and a Superintendent's Report.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the aforementioned public meeting. Those not wishing to appear in person may submit written statements to the General Superintendent of the Golden Gate National Recreation Area on these items. Statements will be accepted until February 10, 1989.

The meeting is open to the public. Persons wishing to receive further information on this meeting or who wish to submit written statements may contact the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123, telephone (415) 556–4484.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript is available after February 17, 1989. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Date: December 14, 1988.

**Stanley T. Albright,**

*Regional Director, Western Region.*

[FR Doc. 88–29344 Filed 12–21–88; 8:45 am]

BILLING CODE 4310–70–M

## INTERSTATE COMMERCE COMMISSION

**[Finance Docket No. 31342]**

## Soo Line Railroad et al.; and Burlington Northern Railroad Co.; Exemptions; Joint Project for Relocation of a Line of Railroad and Trackage Rights

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of Exemption.

**SUMMARY:** The Soo Line Railroad Company (Soo) has filed a Notice of Exemption pursuant to 49 CFR 1180.2(d)(5) and (7) to relocate operations and to acquire trackage rights over a 145.96-mile long line of railroad owned and operated by the Burlington Northern Railroad Company (BN) between BN milepost 155.36 at Soo Junction near Schley, MN, and BN milepost 9.40 at Superior, WI. The trackage rights will enable Soo to relocate certain operations within its Superior terminal which, in turn, will permit Soo to abandon a 1.26-mile portion of a line of railroad between Soo milepost 279.49 at interlocking "MJ" in Superior, and Soo milepost 278.23 at "Junction 278" near Saunders, WI. The proposal also involves the construction by Soo of a new connector track between Soo's and BN's lines at interlocking "MJ" in Superior.

On October 24, 1984 (53 FR 43050 October 25, 1988), the Commission revoked Soo's exemptions pending compliance by Soo with possibly applicable environmental review requirements under the Coastal Zone Management Act (CZMA). Soo has now complied with the CZMA requirements. Also, the Commission has found that environmental review is not required of the involved transactions. Consequently, the October 24 decision should be vacated and this exemption notice published.

As a condition to use this exemption, any employee affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

**DATE:** The exemption is effective on December 22, 1988. Petitions to revoke may be filed at any time.

**ADDRESS:** Petitions to revoke must be filed with:

1. Office of the Secretary, Case Control Branch, Interstate Commerce Commission Bldg., Washington, DC 20423, and

2. Soo's representative: Larry D. Starns, General Attorney, Soo Line Building, Suite 1000, 105 South Fifth Street, Box 530, Minneapolis, MN 55440.

**FOR FURTHER INFORMATION CONTACT:** Joseph H. Dettmar, (202) 275–7245. [TDD for hearing impaired service (202) 275–1721].

**SUPPLEMENTARY INFORMATION:** Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Assistance for the hearing impaired is available through TDD services (202) 275–1271.

Decided: December 16, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

**Noreta R. McGee,**

*Secretary.*

[FR Doc. 88–29323 Filed 12–21–88; 8:45 am]

BILLING CODE 7035–01–M

## DEPARTMENT OF JUSTICE

### Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Congoleum Corporation* has been lodged with the United States District Court for the District of New Jersey. The consent decree addresses alleged violations by Congoleum Corporation of the New Jersey State Implementation Plan ("SIP") and the Clean Air Act relating to volatile organic substances ("VOS") emissions from the rotogravure printing process at Congoleum's Trenton, New Jersey plant.

The proposed Consent Decree provides that Congoleum will pay a civil penalty of $135,000, shall operate its rotogravure printing process and associated pollution control equipment in compliance with the New Jersey SIP, and shall test its afterburner to establish whether the afterburner is meeting the destruction efficiency requirements of the New Jersey SIP.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Congoleum Corporation*, D.J. Ref. 90–5–2–1–1101.

The proposed Consent Decree may be examined at the office of the United States Attorney, District of New Jersey, 970 Broad Street, Newark, New Jersey 07102, and at the Office of Regional Counsel, United States Environmental Protection Agency, Region II, 26 Federal Plaza, New York, New York 10278. Copies of the Consent Decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 6317, Ninth Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice. In requesting a copy, please refer to the referenced case name and D.J. Ref. number and enclose a check in the amount of $2.70 (ten cents per page reproduction cost) payable to the Treasurer of the United States.

**Roger J. Marzulla,**

*Assistant Attorney General, Land and Natural Resources Division.*

[FR Doc. 88–29417 Filed 12–21–88; 8:45 am]

BILLING CODE 4410–01–M

## Drug Enforcement Administration

### Importation of Controlled Substances; Application; Wildlife Laboratories, Inc.

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on January 7, 1988, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed no later than January 23, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745–43746 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Dated: December 15, 1988.

**Gene R. Haislip,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. 88–29354 Filed 12–21–88; 8:45 am]

BILLING CODE 4410–09–M

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**[Notice 88–104]**

### National Environmental Policy Act; Availability of Draft Environmental Impact Statement, Advanced Solid Rocket Motor

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Notice of availability of draft environmental impact statement.

**SUMMARY:** Notice is hereby given of the public availability of the draft Environmental Impact Statement (EIS) for Advanced Solid Rocket Motor (ASRM) program. Comments on the EIS and on matters set forth therein are solicited from and may be submitted by state and local agencies and members of the public. Such comments should be submitted to Ms. Rebecca McCaleb, Building 2423, Stennis Space Center, Mississippi 39529–6000. All comments must be received within 45 days of the Environmental Protection Agency Notice of Availability in order to be

considered in the preparation of the final EIS.

Copies of the draft statement may be obtained or examined at any of the following locations:

(a) NASA Headquarters, Public Documents Room (Room 126), 600 Independence Avenue SW., Washington, DC 20546.
(b) NASA/Ames Research Center (Building 201, Room 17), Moffett Field, CA 94035.
(c) NASA/Ames Research Center, Dryden Flight Research Facility (Building 4800, Room 1017), P.O. Box 273, Edwards, CA 93523.
(d) NASA/Goddard Space Flight Center (Building 8, Room 150), Greenbelt, MD 20771.
(e) NASA/Johnson Space Center (Building 1, Room 136), Houston, TX 77058.
(f) NASA Kennedy Space Center (Headquarters Building, Room 1207), Kennedy Space Center, FL 32899.
(g) NASA Langley Research Center (Building 1219, Room 304), Hampton, VA 23365.
(h) NASA Lewis Research Center (Administration Building, Room 120), 21000 Brookpark Road, Cleveland, OH 44135.
(i) NASA/Marshall Space Flight Center (Building 4200, Room G–11), Huntsville, AL 35812.
(j) NASA/Stennis Space Center (Building 1100, Room A–213), Bay St. Louis, MS 39520.
(k) Jet Propulsion Laboratory (Building 180, Room 600), 4800 Oak Grove Drive, Pasadena, CA 91109.
(l) NASA/Goddard Space Flight Center, Wallops Flight Facility (Library Building, Room E–105), Wallops Island, VA 23337.

December 15, 1988.

**M. Peralta,**

*Associate Administrator for Management.*

[FR Doc. 88–29298 Filed 12–21–88; 8:45 am]

BILLING CODE 7510–01–M

## NATIONAL SCIENCE FOUNDATION

### Committee Management; Renewal; Advisory Panel for Engineering Research Centers

The Assistant Director for Engineering has determined that the renewal of the Advisory Panel for Engineering Research Centers for an additional 2 years is necessary and in the public interest. This determination follows consultation with the Committee Management Secretariat, General Services Administration.

December 19, 1988.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88–29449 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

### Division of Ocean Sciences, Advisory Panel for Ocean Sciences Research; Meeting

The National Science Foundation announces the following meeting:

*Name:* Advisory Panel for Ocean Sciences Research.

*Date and Time:* January 24–25, 1989; 8:30 a.m.–5:00 p.m.

*Place:* American Association for the Advancement of Science, 1333 H Street, NW., Washington, DC 20005.

*Rooms:* First Floor Conference Room A, First Floor Conference Room B, Eighth Floor Conference Room, Eleventh Floor Conference Room.

*Type of Meeting:* Closed.

*Contact Person:* Dr. Michael R. Reeve, Head, Ocean Sciences Research Section, Room 609, National Science Foundation, Washington, DC 20550, Telephone (202) 357–9600.

*Summary Minutes:* May be obtained from the Contact Person at the above address.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research in oceanography.

*Agenda:* Closed—To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of U.S.C. 552b(c), Government in the Sunshine Act.

December 19, 1988.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88–29451 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

### Review Panel for Research in Teaching and Learning Program; Meeting

The National Science Foundation announces the following meeting:

*Name:* Review Panel for Research in Teaching and Learning Program.

*Date and Time:* January 11–13, 1989, from 8:00 p.m.to 9:00 p.m the night of the January 11; January 12, 1989, from 8:30 a.m. to 5:00 p.m. and each day after.

*Place:* Institute for Research on Learning, 2550 Hanover Street, Palo Alto, CA 94304.

*Type of Meeting:* Closed.

*Contact Person:* Raymond J. Hannapel, Program Director for Research in Teaching and Learning Program, Room 635A, 202/357–7071.

*Summary Minutes:* May be obtained from the Contact Person at the above address.

*Purpose of Meeting:* To provide advice and recommendations concerning support for research.

*Agenda:* To review and evaluate research proposals as part of the selection process for awards.

*Reason for Closing:* The proposals being reviewed include information of a propriety confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

December 19, 1988.

**M. Rebecca Winkler,**

*Committee Management Officer.*

[FR Doc. 88–29452 Filed 12–21–88; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Abnormal Occurrences for Second Quarter CY 1988 Dissemination of Information

Section 208 of the Energy Reorganization Act of 1974, as amended requires the NRC to disseminate information on abnormal occurrences (i.e., unscheduled incidents or events which the Commission determines are significant from the standpoint of public health and safety). The following incidents at NRC licensees were determined to be abnormal occurrences (AOs) using the criteria published in the **Federal Register** on February 24, 1977 (42 FR 10950). The abnormal occurrences are described below, together with the remedial actions taken. The events are also being included in NUREG–0090, Vol. 11, No. 2 ("Report to Congress on Abnormal Occurrences: April-June 1988"). This report will be available in the NRC's Public Document Room, 2120 L Street NW., (Lower Level), Washington, DC, about three weeks after the publication date of this **Federal Register** Notice.

#### 88–10 Significant Breakdown in Management and Procedural Controls at a Medical Facility

One of the general AO criteria notes that major deficiencies in use of, or management controls for, licensed materials can be considered an abnormal occurrence. In addition, one of the AO examples notes that serious deficiency in management or procedural controls in major areas can be considered an abnormal occurrence.

*Date and Place*

This occurrence addresses licensee performance, leading to an Order Modifying License and Proposed Civil Penalty of $5,000 issued on June 3, 1988; Riverton Memorial Hospital-Health Trust, Inc., Riverton, Wyoming.

*Nature and Probably Consequences*

During a special, unannounced inspection on September 30 and October 1, 1986, in response to an allegation of unauthorized individuals using radioactive materials, an NRC inspector identified nine violations of NRC requirements and substantiated the allegation. An enforcement conference was held November 4, 1986, with members of the licensee's management to discuss the findings of the inspection and the licensee's corrective actions.

On January 21, 1987, a Notice of Violation and Proposed Imposition of Civil Penalties ($2,500) was issued. The licensee requested mitigation of the civil penalties, but mitigation was denied by the NRC. On June 11, 1987, an Order Imposing Civil Monetary Penalty was issued.

On March 24, 1988, a special, unannounced inspection was performed to assess the effect of the licensee's corrective actions. The NRC inspectors identified eight violations of NRC requirements, of which four were repeated from the previous inspection and two were related to previous findings. The violations involved, (1) an unauthorized use of licensed material, (2) failure to adequately instruct a worker, (3) failure of the Radiation Safety Committee to meet quarterly, (4) failure to notify the Commission within 30 days that authorized users had terminated employment, (5) failure to perform quarterly inventories of sealed sources, (6) failure to have a copy of the license on which a visiting physician was named, (7) failure to make a record of a diagnostic misadministration, and (8) failure to provide all required information on radiopharmaceutical administration records.

A Confirmation of Action Letter (CAL) was issued March 29, 1988, to confirm, among other things, that the hospital had established controls to preclude the conduct of therapeutic procedures involving licensed materials. The licensee responded on April 7, 1988, with a copy of a memorandum distributed to all nuclear medicine personnel, which stated that no therapeutic procedures were to be performed.

Another enforcement conference was held April 15, 1988, and on June 3, 1988, the NRC issued an Order Modifying License and Notice of Violation and Proposed Imposition of Civil Penalty for $5,000. The licensee responded, acknowledging the violations and proposing a new plan of corrective actions.

*Cause or Causes*

The causes are attributed to significant deficiencies in management oversight and control of the licensed program.

*Actions Taken to Prevent Recurrence*

Licensee

The licensee trained its personnel, including the Radiation Safety Officer. In a letter of May 2, 1988, the licensee committed to setting up a calendar for those parts of its radiation safety program that need to be performed on a regular schedule and committed to a review of the program by the hospital administrator on a monthly basis.

The licensee has committed to hiring a consulting company to audit the hospital's radiation protection program on a quarterly basis.

NRC

The NRC modified the license by order issued June 3, 1988. The order required the licensee to (1) notify the NRC Region IV office by telephone prior to the effective date of any employment termination of any personnel directly involved in the nuclear medicine department's licensed activities, and (2) have audits of the radiation safety program performed by an independent party for one year, at quarterly intervals.

The NRC reviewed the licensee's proposed corrective action and approved the use of the consultant. The licensee's program will be reinspected to confirm the implementation and effectiveness of corrective actions.

**88–11 Medical Diagnostic Misadministration**

One of the general AO criteria notes that an event involving a moderate or more severe impact on public health or safety can be considered an abnormal occurrence.

*Date and Place*

June 9, 1988; Veterans Administration Medical Center (Wadsworth), Los Angeles, California.

*Nature and Probable Consequences*

For a bone metabolism, a patient was administered a dose of 15 millicuries of technetium (Tc)–99m DTPA, which exceeded the prescribed dose by a factor of 1000. The misadministration was initially caused by a technologist presenting the wrong dose to a resident physician for injection. The resident physician then administered the radioactive material without properly identifying the material or determining the procedure for which it was to be administered.

The licensee stated that no untoward effects on the patient are anticipated. (For comparison purposes, 20 millicuries of Tc–99m DTPA is routinely used in the United States for diagnostic renal perfusion studies).

*Cause or Causes*

The cause was due to the failure of the technician and resident physician to follow the protocol for radio pharmaceutical injections.

*Actions Taken to Prevent Recurrence*

Licensee

The Chief of Service immediately conducted a review and discussion of injection procedures. All nuclear medicine staff attended the required sessions. Personnel performing injections were admonished to determine appropriateness of dose and/or procedure, as specified in the Service Protocol for Radiopharmaceutical Administration.

NRC

The circumstances of the misadministration were discussed with the licensee. The licensee's corrective actions were determined to be acceptable.

Dated at Rockville, MD this 16th day of December, 1988.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 88–29383 Filed 12–21–88; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–334 and 50–412]**

## Duquesne Light Co. et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment Nos. 133 and 9 to Facility Operating License Nos. DPR–66 and NPF–73, respectively, issued to Duquesne Light Company, et al. (the licensee). The amendments revise the Technical Specifications for operation of the Beaver Valley Power Station, Units 1 and 2, located in Shippingport,

Pennsylvania. The amendments are effective as of the date of issuance, to be implemented within 60 days of issuance.

The amendment excludes all containment isolation weight- and spring-loaded check valves not subject to Type-C testing from the lift test requirements of Specification 4.6.3.1. The valves, however, will continue to be tested in accordance with ASME Section XI, as specified in Specification 4.0.5.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the **Federal Register** on August 16, 1988 (53 FR 30880). No request for a hearing or petition for leave to intervene was filed following this notice.

The staff has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the staff has concluded that the issuance of these amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action, see (1) the application for amendments dated June 22, 1988, (2) Amendments Nos. 133 and 9 to License Nos. DPR–66 and NPF–73, (3) the staff's related Safety Evaluation and, (4) the staff's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street NW., Washington, DC, and the B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Divison of Reactor Projects I/II.

Dated at Rockville, Maryland this 13th day of December, 1988.

For the Nuclear Regulatory Commission.

**Peter S. Tam,**

*Senior Project Manager, Project Directorate I–4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–29389 Filed 12–21–88; 8:45 am]

BILLING CODE 7590–01–M

**[Docket No. 50–499]**

## Houston Lighting and Power Co. et al., South Texas Project, Unit 2; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Facility Operating License No. NPF–78 to Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company and City of Austin, Texas (the licensees) which authorizes operation of the South Texas Project, Unit 2 (the facility) at reactor core power levels not in excess of 3800 megawatts thermal in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to five percent of full power (190 megawatts thermal). Authorization to operate beyond five percent of full power will require specific Commission approval.

The South Texas Project, Unit 2 is a pressurized water reactor located in Matagorda County, Texas, west of the Colorado River, 8 miles north-northwest of the town of Matagorda and about 89 miles southwest of Houston. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license for the South Texas Project was published in the **Federal Register** on December 20, 1977 (42 FR 63826).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement and the Assessment of the Effect of License Duration on Matters Discussed in the Final Environmental Statement for the South Texas Project, Unit 2 (dated August 1986) since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

Pursuant to 10 CFR 51.52, the Commission has determined that the granting of relief and issuance of the exemptions included in this license will have no significant impact on the environment. These determinations were published in the **Federal Register** on December 9, 1988 (53 FR 49804), December 16, 1988 (53 FR 50604) and December 16, 1988 (53 FR 50605).

For further details with respect to this section, see (1) Facility Operating License No. NPF–78, with Technical Specifications (NUREG–1334) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated June 10, 1986; (3) the Commission's Safety Evaluation Report, dated April 1986 (NUREG–0781), and Supplements 1 through 6; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements thereto; and (6) the Final Environmental Statement, dated August 1986 (NUREG–1711).

These items are available for inspection at the Commission's Public Document Room located at 2120 L Street NW., Washington, DC 20555, and at the Local Public Document Rooms in the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488 and in the Austin Public Library, 810 Guadalupe Street, Austin, Texas 78701. A copy of the Facility Operating License No. NPF–78 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Division of Reactor Projects–III, IV, V and Special Projects. Copies of the Safety Evaluation Report and Supplements 1 through 6 (NUREG–0781) and the Final Environmental Statement (NUREG–1171) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7982 or by calling (202) 275–2060 or (202) 275–2171.

Dated at Rockville, Maryland this 16th day of December, 1988.

For the Nuclear Regulatory Commission.

**George F. Dick,**

*Project Manager, Project Directorate-IV, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–29390 Filed 12–21–88; 8:45am]

BILLING CODE 7590–01–M

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**[Docket Nos. 50–338 and 50–339]**

## Virginia Electric and Power Co., et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. and to Facility Operating License Nos. NPF–4

and NPF–7, to the Virginia Electric and Power Company (the licensee), which revised the Technical Specifications for operation of the North Anna Power Station, Units 1 and 2 (NA–1&2), located in Louisa County, Virginia. The amendments were effective as of the date of their issuance.

The amendments revised the NA–1&2 TS containment air temperature upper limit from 105 °F to 120 °F and the volume of water available from the refueling water storage tank for the quench spray system was redefined and reduced to permit the use of wide range level instrumentation for TS surveillance.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 12, 1988 (53 FR 16921).

Also in connection with this action, the Commission prepared an Environmental Assessment and Finding of No Significant Impact, which was published in the **Federal Register** on December 9, 1988 (53 FR 49805).

For further details with respect to the action, see (1) the application for amendment dated March 2, 1988, as supplemented August 5, 1988, (2) Amendment Nos. 110 and 96 to Facility Operating License Nos. NPF–4 and NPF–7, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901.

Dated at Rockville, Maryland this 14th day of December 1988.

For the Nuclear Regulatory Commission.

**Leon B. Engle,**

*Project Manager, Project Directorate II–2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.*

[FR Doc. 88–29391 Filed 12–21–88; 8:45 am]

BILLING CODE 7590–01–M

## OFFICE OF PERSONNEL MANAGEMENT

### Request for Approval Of Comprehensive Medical Plans Submitted to OMB for Clearance

**AGENCY:** Office of Personnel Management.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1980 (Title 44, U.S. Code, Chapter 35), this notice announces a renewal of an existing information collection and record-keeping requirement from the public. Comprehensive Medical Plans—Application to Participate in Federal Employees Health Benefits Program (FEHBP) and Contractor Records Retention are required under the authority of Title 5, U.S. Code, Chapter 89 and Federal Acquisition Regulation (FAR) 9.1. Comprehensive medical plans applying for participation in the FEHBP must complete an application form so OPM can determine if the plans are "responsible prospective contractors" as defined under FAR 9.1. Once approval is obtained, the comprehensive medical plans are required to keep administrative, financial and claim records, which are subject to audit. Annual use (the number of plans expected to apply) is estimated at 75 applications during the next contract year from January 1, 1989 through December 31, 1989. The total annual information and recordkeeping burden is 22,896 hours. For copies of this proposal, call Lawrence F. Dambrose on (202) 632–0199.

**DATE:** Comments on this proposal should be received by January, 9, 1989.

**ADDRESSES:** Send or deliver comments to—

C. Ronald Trueworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street, NW., Room 6410, Washington, DC 20415, and

Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, NW., Room 3235, Washington, DC 20503.

**FOR FURTHER INFORMATION CONTACT:** James L. Bryson, (202) 632–5472.

U.S. Office of Personnel Management.

**Constance Horner,**

*Director.*

[FR Doc. 88–29314 Filed 12–21–88; 8:45 am]

BILLING CODE 6325–01–M

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–26362; File No. SR–MSE–88–6]**

### Self-Regulatory Organization; Midwest Stock Exchange, Incorporated; Order Approving Proposed Rule Change

The Midwest Stock Exchange, Incorporated ("MSE") submitted on September 9, 1988, a proposed rule change (File No. SR–MSE–88–6) pursuant to section 19(b) of the Securities Exchange Act of 1934 ("ACT"). The proposed rule change eliminates the present limit order execution criterion of the Midwest Automated Execution System ("MAX") which requires a cospecialist to manually execute 300 shares for every 500 shares of the same issue that trades at the limit price on the primary market.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 26139 (September 30, 1988) 53 FR 39564. The Commission received no comments on the proposal. This order approves the proposal.

MSE Article XX, Rule 34 (BEST Rule) requires that all agency limit orders up to 1099 shares be filled if, among other criteria, the issue is trading at the limit price on the primary market. A fill is not required, however, if it can be shown that the order would not have been executed if it had been sent to the primary market or the broker and specialist agree to specific volume related or other cirteria for requiring a fill. In 1981, the MSE implemented new limit order execution criteria for limit orders entered over the MAX System. This new criteria required a specialist to manually execute 300 shares of a MAX entered limit order for every 500 shares that trade at the limit price in the primary market. When a limit order is received over the MAX System and is printed out, the specialist holds the order and determines when each limit order received should be executed based on his/her observation of the volume traded on the primary market. This rule change defined specific volume related criteria requiring a fill of limit orders entered over the MAX System.

In 1985, another rule change was implemented which clarified how specialists should handle existing limit orders entered manually in the book when executing a MAX limit order at the same price using the "3 for 5" criteria. Under that rule change, upon the printing of 500 shares in the primary market, the specialist is required to execute both the MAX order under the "3 for 5" criteria and 300 shares of the

resting order. All resting orders in the book would constitute one order for purposes of this rule. The purpose of this change was to provide execution criteria that would be equitable to limit orders entered both by MAX and by floor broker, while at the same time recognizing the differences between the expectations of member firms utilizing an automated execution system and those transmitting orders through their representatives on the trading floor. Since 1985, however, the "3 for 5" criteria has created an administrative burden for the specialist as well as additional confusion as to which limit orders and what size are entitled to a fill based on volume on the primary market.

The proposed rule change eliminates the "3 for 5" rule, and all limit orders, whether entered over MAX or by floor broker, are to be handled in the same manner under the general BEST rule requirement. The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSE.

It is *Therefore Ordered,* pursuant to section 19(b)(2) of the Act, that SR-MSE-88-6 be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

Dated: December 15, 1988.

[FR Doc. 88-29334 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

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## Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

December 14, 1988.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Sothebys Holdings Inc.
Class A, Common Stock, $1.00 Par Value (File No. 7-4090)
Berkshire Hathaway, Inc.
Common Stock, $5.00 Par Value (File No. 7-4091)
Fibreboard Corporation
Common Stock, $01 Par Value (File No. 7-4092)
Lomas Mortgage Securities Fund, Inc.
Common Stock, $01 Par Value (File No. 7-4093)
Maxxam Inc.
Common Stock, $.50 Par Value (File No. 7-4094)
Oppenheimer Multi-Government Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-4095)
Oregon Steel Mills Inc.
Common Stock, $.01 Par Value (File No. 7-4096)
Templeton Global Government Income Trust
Shares of Beneficial Interest, $.01 Par Value (File No. 7-4097)
Texaco Canada Inc.
Common Stock, No Par Value (File No. 7-4098)
British Steel Plc
Interim American Depositary Shares (File No. 7-4099)
Inland Steel Industries, Inc.
$3.625 Cumulative Convertible Exchangeable Preferred Stock, $1.00 Par Value (File No. 7-4100)
Federal Home Loan Mortgage Corporation
Senior Participating Preferred Stock, $2.50 Par Value (File No. 7-4101)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 5, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29338 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-26361; File No. SR-NASD-88-43]**

## Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change To Define Professional Trader for Purposes of the Small Order Execution System

On September 26, 1988, the National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b-4 thereunder [2] to adopt a new subsection (E) to the NASD's Rules of Practice and Procedures for the Small Order Execution System ("SOES Rules") to prohibit members from entering orders in its Small Order Execution System ("SOES") on behalf of a professional trading account.

SOES was created for the purpose of entering orders of limited size [3] for retail customers involving securities quoted on the National Association of Securities Dealers Automated Quotation ("NASDAQ") System. Such orders receive an immediate execution at the best available price. Orders entered in SOES are executed automatically at the inside market.[4]

SOES Rules prohibit member firms from attempting to circumvent the SOES order-size limits by breaking up any order too large for SOES into a series of smaller orders for execution.[5] Nevertheless, the NASD is concerned that some SOES Order Entry Firms [6] and their customers have been using SOES to execute orders for so-called "professional traders." These traders monitor the market and are capable of reacting instantly to temporary disparities in the price of a security, using SOES. Because market makers markets in a number of securities, they are not always able to react instantly to a change in the price of each security in

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[1] *See* 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b-4 (1988).

[3] The maximum order size for SOES orders was 1,000 shares for NASDAQ/National Market System ("NMS") securities and 500 shares for regular NASDAQ securities. Recent amendments to SOES (discussed *infra* at notes 14, 23 and accompanying text) permit different order sizes to be set for different categories of NASDAQ/NMS securities.

[4] The "inside market" is the best bid and ask price for a security.

[5] SOES Rules, section (c)(3)(C), *NASD Manual*, ¶ 2460, at 2306.

[6] The term "SOES Order Entry Firm" refers to an NASD member who is registered as a SOES order entry firm for purposes of participation in SOES. As such, they may enter orders of limited size for execution against SOES Market Makers. *See* SOES Rules section (a)(6), *NASD Manual*, ¶ 2451, at 2303.

which they make a market. The NASD believes that, in response to the activity of professional traders, market makers may limit the number of securities in which they make markets, thereby affecting the liquidity of the market. Therefore, the NASD is proposing to eliminate the use of SOES by SOES Order Entry Firms on behalf of professional trading accounts.

The proposed rule change defines "professional trading account" to include any account in which five or more "day trades" [7] have been executed through SOES during any trading day or where a professional trading patterin in SOES is exhibited. A professional trading pattern is deemed to be demonstrated by (1) the existence of a pattern or practice of executing day trades; (2) the execution of a high volume of day trades in relation to the total transactions in the account; or (3) the execution of a high volume of day trades in relation to the amount and value of securities held in the account.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 26151, October 3, 1988) and by publication in the **Federal Register** (53 FR 39703, October 11, 1988).

## I. Comment Letters

The Commission received 19 comment letters on the proposed rule change. Of these comment letters, the National Security Trader Association ("NSTA"), representing over 7,000 professional members, favored the proposed rule change [8] and the other commentators objected to the proposal.[9]

The central argument made by the commentators in opposition to the filing is that the proposed rule change will have a negative impact on the over-the-counter ("OTC") market.[10] They assert that the activities of customers who employ SOES to obtain an automatic execution against a market maker whose quotation is the best, impose a market discipline. Market makers whose quotes are not "in line" with the other market makers are forced to update their quotations once they become aware, through repeated SOES executions, that their quotation is not in line with the majority of market makers for that particular stock. As part of this argument, the commentators assert that, by eliminating "professional traders" from SOES, the market will experience a decline in liquidity as well as an increase in inefficiency. They suggest that market makers will be even less motivated to update their quotations without the market discipline imposed by professional customers.

The commentators also assert that the NASD has not provided any substantive justification for the proposed rule change.[11] Moreover, these commentators argue, that, even if the NASD's concern is appropriate, the proposed rule change is not necessary in light of an NASD rule change recently approved by the Commission permitting SOES market makers to lower their exposure limits on a daily basis.[12]

The NSTA, the commentator favoring the proposed rule change, believes that the proposed rule change will differentiate between those accounts which use SOES for small, retail orders, for which SOES was conceived, and those which are manifestly used by the professional traders. They argue that the proposed rule change will preserve the inherent purpose for which SOES was created and thereby benefit public customers' small retail orders.

## II. Background

The need for greater automation of the order execution process in the OTC market became apparent during the surge in trading volume that began in the fall of 1982.[13] With the increase in trading volume, the handling of routine small orders became an increasing burden for market makers. Consequently, the NASD implemented SOES, a system that is designed for individual retail customer orders and is restricted to orders of a maximum size.[14] Although SOES handles only approximately 1.3% of the total NASDAQ volume, 13% of all OTC transactions are handled through SOES. Thus, it is obvious that the average size of a SOES transaction is far smaller than the size of an average OTC transaction.[15] As discussed, SOES makes it possible for Order Entry Firms to obtain automatic execution for small orders [16] at the best price available on NASDAQ.[17]

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[7] The proposed rule change defines the term "day trade" or "day trading" to mean the execution of offsetting trades in the same security for generally the same size during the same trading day.

[8] *See* letter from John L. Watson III, President, and Gary D. Fender, Chairman, NSTA, to Jonathan G. Katz, Secretary, SEC, dated October 29, 1988. *See also* letter from Arthur J. Pacheco, President, Security Traders Association of New York, to Brandon Becker, SEC, dated August 18, 1988.

[9] *See* letter from: Harvey Houtkin, Vincent E. Scala, Parkway Home Inspection Services Inc., James S. Barr, Dean McCarty, Thomas K. Davis, Piper, Jaffray and Hopwood, and John Jay Edwards, to Richard G. Ketchum, director, Division of Market Regulation, SEC, dated October 20, 1988, November 10, 1988, November 11, 1988, November 27, 1988, undated, and undated respectively; Barry Soloway, Soloway & Co., Mark Scheinbaum, Fuhrman-Matt Securities, Inc., Martin S. Schwartz, Martin S. Schwartz and Co., and Robert M. Schwartz to Richard Kepchum [sic], dated November 15, 1988, November 17, 1988, and November 22, 1988; Jake Jacobus to Mr. Ketcham [sic], dated November 16, 1988; Harvey Houtkin to Kathryn Natale, SEC, dated November 18, 1988; Brian F. Amery, Bressler, Amery & Ross, to Jonathan G. Katz, Secretary, SEC, dated October 31, 1988; Clifford Atkin to Securities and Exchange Commission, dated November 29, 1988; Steven Cohen (undated); Dean Scharf (undated); Mike Rosenbaum (undated); and David Hess (undated). *See also* Donlan, "Terrors of the Tube, Computerized Traders vs. Market Makers," *Barron's*, November 7, 1988, at 24, and letter "To the Editor," from Harvey Houtkin, *Barron's*, November 14, 1988, at 42.

[10] In addition, the commentators apparently disagree with the NASD's definition of the term professional trader. They do not, however, raise any objections to the specific components of the definition. Nevertheless, one commentator did specifically argue that the definition of professional trader is ambiguous, and gives rise to concerns regarding enforcement of the proposed rule change. *See* letter from Brian F. Amery, Bressler, Amery & Ross, to Jonathan G. Katz, Secretary, SEC, dated October 31, 1988.

[11] The NASD has represented that one SOES Order Entry Firm represents, on average, between 5 and 10% of the number of trades executive through SOES and that those trades represent between 15 and 25% of the total SOES volume. Furthermore, between 87 and 98% of that firm's SOES trades are day trades. *See* letter from Dennis C. Hensley, Vice President and Deputy General Counsel, NASD, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated December 1, 1988.

[12] *See* letters from Harvey Houtkin, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated October 20, 1988, and from Steven Cohen (undated). *See* Securities Exchange Act Release No. 26173 (October 12, 1988), 53 FR 40809 (October 18, 1988). The proposed rule change (SR-NASD-88-42) was approved for a six-month period. *See also infra* note 23 and accompanying text.

[13] *See* Colby & Simon, *The National Market System for Over-the-Counter Stocks*, 55 Geo. Wash. L. Rev. 17 (1986).

[14] The initial phase of SOES became operational in January, 1985; the second phase became operational in August, 1986. At the system's inception, executions were limited to orders in NASDAQ/NMS securities of 500 shares or fewer. *See NASD, NASDAQ Subscriber Bulletins 1 (Mar. 1984) & 1-2 (July 29, 1986). For a full description of SOES, see* SEC File No. SR-NASD-84-26. *See also* Securities Exchange Act Release No. 21743 (February 12, 1985), 50 FR 7432 (February 22, 1985).

[15] For example, the average size of a trade in National Market System ("NMS") securities (inclusive of SOES trades) is 2,025 shares, whereas the average size of SOES trades in NMS securities is only 350 shares.

[16] Small orders are defined in the SOES Rules. Under the latest amendments, the size of a small order eligible for execution through SOES can be 200, 500, or 1,000 shares, depending on the characteristics of the security. Small orders eligible for execution in SOES, however, also may be effected manually by the market maker. *See* note 23 and accompanying text.

[17] SOES works in tandem with NASDAQ. Market makers enter their bid and ask quotations in NASDAQ; the same quotations are reflected in SOES. Market makers in NASDAQ securities are required to enter and maintain two-sided quotations for a security in which they are registered as a market maker in the NASDAQ System ("dealer's quote"). In this context, the market maker must

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During the October market break of 1987, the OTC market experienced severe price declines and record high volume.[18] Displayed quotations did not always reflect the prevailing market. The liquidity of the OTC market was reduced dramatically because market makers withdrew from SOES and NASDAQ. In addition, locked and crossed markets [19] prevented automatic executions through SOES and made it difficult to establish bid and ask prices for specific securities. These problems combined prevent the efficient execution of transactions through the NASDAQ System and thus frustrated the purposes of sections 11A and 15A of the Act.[20]

In response to the problems that surfaced during the October market break, SOES was upgraded to enhance the quality of the system's service and to ensure that individual customers would have access to a more efficient and liquid market, particularly during periods of high volume and volatility.[21] Specifically, the NASD made participation in SOES mandatory for all market makers in NASDAQ National Market System ("NASDAQ/NMS") securities. This requirement counteracts the problem of market makers withdrawing from SOES when rapidly moving markets appear to make such withdrawal profitable. In addition, the NASD established a requirement that market makers commit to executions for at least five times the maximum order size in every security for which they make markets if their quotes are at the inside market or if the orders are preferenced [22] to them.[23] The NASD also increased the penalty imposed on market makers who withdraw from SOES without a permissible excuse.[24]

### III. The Proposal is Consistent With the Act and With the Rules and Regulations Adopted Thereunder

The Commission has determined, pursuant to section 19(b)(2) of the Act, that the proposal should be approved. The record indicates that the proposal is consistent with the requirements of the Act including, in particular, the requirements of sections 11A and 15A, and the rules and regulations adopted thereunder. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: "(i) Economically efficient execution of securities transactions; and (ii) the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." Section 15A(b)(8) requires that the rules of the NASD, in general, provide for "fair procedure for the prohibition or limitation of any person with respect to access to services offered by the association or member." [25] Section 15A(b)(6) of the act requires that the rules of the NASD be designed to "prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade," and to facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

The proposed rule change is designed to further the purposes of these sections. For the reasons discussed below, the Commission believes that the proposal will properly limit certain practices inconsistent with the system's design, and that the proposal will further the goals outlined in the Act.

### IV. Discussion

As a threshold matter, the Commission notes that the activity addressed by the NASD's proposal became possible only as a result of the extensive changes made to the operation of SOES earlier this year to respond to problems experienced during the market break.[26] Since these changes were implemented, professional traders have been able to take advantage of slight price disparities among market makers by executing within seconds up to five orders for 1,000 shares each. In particular, these traders are able to respond to news items that result in quotation price moves and execute against market makers who, because of the many securities in which they make markets, have not yet had an opportunity to revise their quotations. These trades generally are liquidated within minutes at the new market price, thereby locking in a profit for the trader.[27] The NASD did not anticipate

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stand ready to buy and sell at those specific prices on a regular and continuous basis. Currently, NASDAQ market makers are required to purchase or sell one round lot (100 shares) of any security in which they make a market, in response to each offer to purchase or sell ("firm quote rule", *see* Rule 11Ac1-1 under the Act, 17 CFR 240.11Ac1-1). Further more, if a market maker provides a quotation for a particular number of shares in excess of 100, it must execute orders for that particular amount at its quoted prices in response to offers to buy or sell.

[18] The Composite index representing the NASDAQ market declined 27.2% during the month of October, 1987, while volume reached the unprecedented level of 288 million shares on Wednesday, October 21, 1987. *See* Division of Market Regulation, *The October 1987 Market Break*, ("Market Study") at ix (1988). The previous peak was January 23, 1987, when 261.8 million shares were traded.

[19] A "locked market" exists when the bid price quoted by one market maker in a security equals the ask price quoted by another market maker in the same security. A "crossed market" exists when the bid price quoted by one market maker in a security is greater than the ask price quoted by another market maker in the same security.

[20] Discussed *infra* at 9-10.

[21] *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR 22594 (June 16, 1988).

[22] Orders may be enterd into SOES and designated for routing to a particular market maker. This type of order-entry is referred to as "preferencing." If this is done, the order is executed at the best price for that market maker's account even if its quote is not the best. Approximately 50% of the orders executed through SOES are preferenced orders. Market makers must have agreed in advance to accept preferenced orders.

[23] Market makers are, of course, free to establish larger exposure limits. In addition, these amendments established three maximum order-size limits for SOES orders, which are based on the average daily non-block volume, bid price, and number of market makers for each security. The tiers were established in a manner that the NASD believed would provide public investors with the most efficient means of handling their small orders while ensuring that market makers would not be required to assume unrealistic risks.

[24] The penalty for an unexcused withdrawal is that a withdrawing market maker may not re-enter the market for that security for 20 business days. In addition, the NASD limited the reasons for which an excused withdrawal would be granted. (It should be noted that, when SOES market makers were able to withdraw from SOES at any time without penalty, it was not necessary for them to rely on exposure limits to limit their risk. SOES market makers were able to adjust their exposure limits at any time during the trading day and could withdraw from SOES at will). The NASD also has submitted a proposed rule change that would permit small market makers to receive an excused withdrawal for vacations. *See* Securities Exchange Release No. 26258 (November 7, 1988), 53 FR 45837 (November 14, 1988).

[25] Section 11A(b)(5) provides that any prohibition or limitation of any person in respect of access to services offered by a registered securities information processor ("SIP"), must not be unfairly discriminatory and must not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. NASDAQ, Inc. is a registered SIP.

[26] At the time these changes were implemented, the Commission was concerned that these new requirements, which impose significant obligations on market makers, might cause market makers to eliminate market making positions and consequently decrease the liquidity of the marketplace. For example, the requirement of mandatory participation in SOES for all market makers in NASDAQ/NMS securities coupled with the increased penalty for withdrawing from SOES, created an economic incentive for market makers to continue their market making positions to avoid being subject to the 20-day penalty, while at the same time caused market makers to evaluate the potential for increased risk posed by mandatory participation in SOES. *See* Securities Exchange Act Release No. 25791 (June 9, 1988), 53 FR at 22597.

[27] In addition, some of these orders were being entered in SOES as a series of transactions for accounts which, taken individually, appeared SOES eligible, but were the result of a single investment decision. The NASD issued an interpretation pursuant to Section 19(b)(3)(A) of the Act to prohibit this practice. *See* Securities Exchange Act Release

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the volume or prevalence of professional trading that has occurred when it proposed its 1988 SOES rule amendments.

The results of SOES trading for professional accounts are clear. They impose substantial additional costs and risks on SOES market makers. These costs and risks could cause market makers to reduce substantially the number of securities for which they make a market. The Commission is concerned that such a widespread reduction in market making could have a significant impact on the liquidity of the markets for NASDAQ/NMS securities.

The primary issue raised by this proposal is whether the NASD, consistent with its statutory requirements, may limit professional traders' access to SOES. As an initial matter, we note that the NASD is not required to provide the SOES service. However, having determined to offer SOES, sections 15A(b) (6) and (8) of the Act [28] require that the service be made available to brokers, dealers, and investors on terms that are neither unfairly discriminatory nor impose any unnecessary or inappropriate burden on competition. Thus, the question before the Commission is whether the NASD's decision to preclude traders from using SOES to profit from short-term pricing discrepancies by OTC market makers who have failed to update their quotes, when these same market makers are required by the NASD rules to participate in SOES, is unfairly discriminatory or imposes any unnecessary or inappropriate burden on competition in light of the statutory goals.

The adverse commentators argue that professional traders provide a valuable service by encouraging market makers to update their quotes in a timely manner. In contrast, the NASD and NSTA, in effect, argue that such trading activity unfairly penalizes market makers who, although acting reasonably within business constraints, do not update their quotes faster than professional traders enter their orders. While such market makers must continue to accept orders for investors seeking to acquire or dispose of an inventory position, the NASD and NSTA do not believe they should be required by rule (which is the effect of the current SOES structure) to accept multiple executions by traders seeking to profit from short-term pricing discrepancies.

The Commission has long believed that timely, accurate, and firm quotations are a key component of an effective national market system.[29] Indeed, this goal is incorporated in section 11A of the Act. In addition, the Commission generally believes that arbitrage trading activities contribute to pricing efficiency. Nevertheless, the Commission does not believe that providing professional traders access to a retail automatic execution service is necessary to achieve these goals in this specific context. NASD rules require firm quotes. Rule 11Ac1–1 under the Act requires quotes to be firm for NMS securities. Moreover, because various broker-dealers operate their own proprietary small order execution systems based on the best displayed quotation in NASDAQ, these broker-dealers have an economic incentive to ensure that quotes of an aberrant market maker do not remain out of line.[30] In this regard, the NASD proposal is structured narrowly to address the situation where a trader seeks to profit from a brief, transitory disparity between one market maker's quote and quotes by other market makers. Such traders are not seeking to establish or liquidate an inventory position. Rather, the near simultaniety of the executions is designed to avoid taking inventory risk and to profit from those transitory pricing discrepancies. Indeed, if these traders believed a fundamental mispricing opportunity had arisen, they still could use SOES if they were willing to hold an inventory position overnight.

Accordingly, in this limited context and because the Commission is satisfied that there are other regulatory and economic incentives to update quotes in a timely manner, the Commission believes that, on balance, it is beneficial to overall market liquidity to preclude professional traders from access to SOES. The Commission is not convinced by arguments of some commentators that other alternatives such as reducing the size requirements for SOES across-the-board have resolved the problems identified. While the NASD's amendment has permitted market makers to reduce their SOES exposure to professional traders, even the lower limits can impose substantial costs on smaller market makers. Moreover, to the extent that many market makers take advantage of the lower limits, this amendment has the potential of cancelling out much of the progress made by the NASD's regulatory responses to the Market Break and substantially reducing liquidity in the OTC market. In light of the experience of last October, the Commission believes it is far more important for the NASD to continue it efforts, including expanded SOES order size, to ensure that investors seeking to establish or liquidate an inventory position have ready access to a liquid OTC market, than to protect the ability of a small group of traders, who were never intended to benefit from SOES, to profit from short-term disparities.

In addition, the Commission is satisfied that the NASD reasonably has concluded that its other regulatory initiative limiting the minimum exposure limit (SR–NASD–88–42) is insufficient to address this matter. Moreover, as a general matter, the Commission does not believe that reducing exposure limits, which affects the liquidity of the entire OTC market, is preferable to focusing on the specific issue of the use of SOES for day trading. Indeed, in the long run, the Commission believes it would be preferable if exposure limits were reinstituted and increased.

Accordingly, the Commission finds, for the reasons described above, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, and in particular the requirements of sections 11A and 15A, and the rules and regulations thereunder.[31]

*It Is Therefore Ordered,* pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is approved.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

Dated: December 15, 1988.

Commissioner Grundfest, concurring, with whom Commissioner Fleischman joins.

I concur with the Commission's decision to approve the rule change proposed by the National Association of

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No. 26045 (August 31, 1988), 53 FR 34856 (September 8, 1988). *See also* Harvey Houtkin and Allstate Investment Group, Inc. v. SEC, No. 88–3725 (3rd Cir. filed November 2, 1988).

[28] *See also* Section 11A(b) (5).

[29] *See Policy Statement of the SEC on the Structure of a Central Market,* March 29, 1973.

[30] Any broker-dealer operating a proprietary system is subject to executions at the best price, even though the quotation is out of line with the market.

[31] With respect to the specific concern raised by the commentators regarding the NASD's definition of the term professional trader (*see supra* note 10), the Commission finds that the description of what would constitute a professional trading pattern provides a clear and understandable standard for the NASD to enforce. Moreover, we note that the NASD is required to act fairly and reasonably pursuant to section 15A(b)(8) of the Act. Of course, the Commission in its oversight capacity will carefully scrutinize application of the rule.

Securities Dealers, Inc. ("NASD") that would prohibit members from entering orders in the Small Order Execution System ("SOES") on behalf of "professional trading accounts." [1] Much of the criticism of the NASD's proposed rule relies, I think, on an overly narrow conception of the economic environment in which SOES operates. When viewed from a broader perspective, these criticisms lose much of their logical force.

As an initial matter, it is essential to recognize that the NASD and SOES operate in a highly competitive environment. The NASD competes every minute of every trading day with the New York Stock Exchange and the American Stock Exchange for listings, market making capital, and customer accounts. Each of these marketplaces expends substantial resources in an effort to convince a broad range of constituencies that theirs is the best market for the purchase and sale of equity securities. The competition is at times fierce and each organization is quick to demean their competitor's systems whenever they perceive an advantage from negative campaigning.[2]

SOES became operational in 1985 and was made mandatory for NASDAQ/NMS market makers in 1988 as part of the NASD's effort to assure small retail customers that they will be able to receive immediate execution at the best prices posted on NASDAQ. All quotations, including those subject to SOES obligations, are displayed on a common NASDAQ screen. SOES provides a particular method for executing retail trades at the prices advertised on the NASDAQ screen. SOES provides a particular method for executing retail trades at the prices advertised on the NASDAQ screen. Without SOES, quotations generally are firm only for orders of 100 shares.[3] Thus, when a broker places a telephone order in excess of 100 shares with a market maker, there is no guarantee that the market maker's quotation is the price at which the market maker stands ready to trade at the volume demanded by the customer. With execution on SOES, however, the customer's order is automatically executed at the best displayed price, up to a maximum amount required by the NASD's SOES rules. As a result, the retail customer has greater assurance that "what you see is what you get" in the over-the-counter market.

The NASD's decision to operate an automatic order execution system, subject to order size limits and restricted to customers who are not professional traders, is economically rational because larger orders can imply new information coming to the market. The arrival of such new information can generate a need to adjust bid and asked prices.[4] There is also a finite amount of capital available for purposes of providing liquidity for any stock at its prevailing market prices. Larger orders may require a liquidity premium in the form of a lower bid or higher asked in order to compensate for the increased demand for immediacy.[5] Moreover, in the intermarket competition for small retail orders, there is substantial value in being able to promise automatic execution to customers at an advertised price and up to a maximum size. Thus, just as a retail merchant promises that if he runs out of inventory on a sale item he will make good on his advertised price with a rain check or some other form of compensation, SOES allows market makers to promise to retail investors that, for orders up to a certain size and for a maximum of five such orders, they can rely on an advertised price, at least until that advertised price is changed.

It therefore makes competitive sense for marketplaces to establish separate procedures for dealing with investors whose trades are less likely to impart information or to impose unusual liquidity costs. In the case of SOES, trades by "professional" traders—which can imply new information—can be treated differently for perfectly sound economic reasons because these trades have different information characteristics.

In order further to demonstrate the reasonableness of the NASD's proposed rule, it is useful to consider the consequences that will result if the rule is rejected. Market makers will demand a competitive return on their market making capital regardless of whether the proposed rule is approved or rejected. Without the rule, however, market makers would recognize a higher probability of being "picked off" by "professional" traders whenever they do not adjust their quotes with sufficient speed. In response, market makers would, no doubt, invest greater effort in promptly updating their quotes. Market makers would not, however, be able to eliminate totally the probability of being picked off. They would therefore be expected to raise their prices fractionally on all NASDAQ/NMS trades in order to compensate for the losses suffered when they are picked off by professionals through SOES.

Market makers raise prices by widening spreads.[6] Thus, if we rejected the NASD's proposed rule, we would likely cause marginally higher spreads on all NASDAQ/NMS trades. These higher prices would be paid out of the pockets of non-"professsional" investors and would be transferred to "professional" traders who pick off laggard market makers. In a perfectly competitive market, the net result would be a wealth transfer from non-"professional" customers to "professional" traders. Put in simpler terms, the profits earned by "professionals" who use SOES to pick off laggard market makers would ultimately come out of the pockets of non-"professional" customers who pay higher spreads on all NASDAQ/NMS trades.

There is, of course, nothing wrong with the swift taking advantage of the slow in the capital markets. That is what

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[1] Securities Exchange Act Release No. 26,151 (October 3, 1988), 53 FR 39703 (October 11, 1988).

[2] *See, eg., U.S. Stock Exchanges Wage Listings War Abroad*, Fin. Times, April 20, 1988, at 10.

[3] *See* NASD Bylaws, Schedule D, Part VI, Section 2(b). *See also* 17 CFR 240.11Ac1–1(c)(2) (1988), which provides that "every responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security * * * at a price at least as favorable * * * as the bid price or offer price comprising such responsible broker's or dealer's published bid or published offer * * * in any amount up to his published quotation size." In practice, while market makers can post bid or asked prices of any size, most market makers generally limit their published quotations to orders of 100 shares. A market maker is not required to honor his published quote, however, if he has submitted a revised quote or if he is in the process of executing a transaction at the published quote and submits a revised quote immediately thereafter. *Id.*

[4] *See, e.g.*, Easley & O'Hara, *Prices, Trade Size, and Information in Securities Markets*, 19 J. Fin. Econ. 69 (1987) ("quantity matters because it is correlated with information about a security's true value * * *. [T]he larger the trade size, the more likely it is that a market maker is trading with an informed trader. This information effect dictates that the market maker's optimal pricing strategy also depends on quantity, with large trade prices reflecting this increased probability of information-based trading."); *see also* Glosten & Harris, *Estimating the Components of the Bid/Ask Spread*, 21 J. Fin. Econ. 123 (1988); Glosten & Milgrom, *Bid, Ask, and Transaction Prices in a Specialist Market with Heterogeneously Informed Traders*, 13 J. Fin. Econ. 71 (1985); Copeland and Galai, *Information Effects and the Bid-Ask Spread*, 38 J. Fin. 1457 (1983).

[5] *See, e.g.*, Easley and O'Hara, *supra* note 4; Glosten and Harris, *supra* note 4; Holthausen, Leftwich and Mayers, *The Effect of Large Block Transactions on Securities Prices: A Cross-Sectional Analysis*, 19 J. Fin. Econ. 237 (1987); Ho and Macris, *Dealer Bid-Ask Quotes and Transactions Prices: An Empirical Study of Some Amex Options*, 39 J. Fin. 23 (1984).

[6] At the margin, and assuming a perfectly competitive market, some market makers may abandon some market making activity if they are unable to generate sufficient volume at a widened spread.

competition is all about.[7] However, competition among the marketplaces has led the NASD to consider that, in order to attract retail volume, the NASD will benefit from offering retail customers firm prices at tight spreads. The continued ability of professional traders to place trades through what was intended to be a retail-oriented system may well threaten the NASD's ability to (1) maintain the level of market making capital that is currently devoted to the NASDAQ system; (2) continue to require market makers to participate in SOES; (3) continue to require market makers to honor quotes entered on SOES; or (4) maintain tight spreads on orders placed through the NASDAQ system. Thus, it falls well within the zone of reasonable judgment and is consistent with the requirements of Section 15A of the Exchange Act for the NASD and this Commission to conclude that, on balance, given the intended retail orientation of SOES and the qualitatively different nature of the order flow present on SOES, it makes sense to preserve narrower and firm commitments at the expense of some marginal and transitory stale pricing in a limited segment of the NASDAQ/NMS market.

[FR Doc. 88-29331 Filed 12-21-88; 8:45 am]
BILLING CODE 8010-01-M

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**[Release No. 34-26363; File No. SR-NYSE-88-41)**

## Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by New York Stock Exchange, Inc.; Relating to Auxiliary Opening Procedures for Orders Relating to Expiring Stock Index Contracts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice hereby is given that on December 12, 1988, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] "Obviously, one may gain a competitive advantage in the marketplace through conduct constituting skill, foresight, industry and the like." *United States v. Carpenter*, 791 F.2d 1024, 1031 (2d Cir. 1986), *aff'd*, 108 S. Ct. 316 (1987).

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends the Exchange's auxiliary opening procedures for assisting in handling the order flow on those days on which there is concurrent expiration of stock index futures, stock index options and options on stock index futures ("quarterly Expiration Fridays"). Specifically, the proposed rule change permits the use of "limit-at-the-opening" orders when using the auxiliary opening procedures.

In addition, the proposed rule change also consists of a revised method of determining those stocks for which imbalances shall be disseminated in accordance with special procedures on quarterly and monthly Expiration Fridays as well as for disseminating imbalances as appropriate on any day when Exchange Rule 80A is in effect.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in Sections A, B and C below.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

(a) Purpose

*Limit-at-the-opening orders.* In June 1988, the Commission approved the Exchange's establishing on a permanent basis the auxiliary opening procedures for quarterly Expiration Fridays (*see* Release No. 34-25804 (June 22, 1988 quarterly)). At that time, the Exchange precluded the use of limit-at-the-opening orders as part of those procedures because such orders could not be entered into the Exchange's electronic display books. Thus, the acceptance of such orders would have complicated a specialist's task in opening the market. Because the electronic display books now can accommodate limit-at-the-opening orders, the purpose of this rule change is to delete the prohibition against such orders.

*Stocks for which imbalances are disseminated.* In regard to the revised method of determining those stocks for which imbalances are disseminated on Expiration Fridays and any days when Exchange Rule 80A is in effect, there are currently two separate lists of stocks as to which imbalances are published.

The list of 50 stocks used on Expiration Fridays consists of:

- 30 stocks in the Dow Jones Industrial Average (DJIA);
- 3 stocks in the Major Market Index (XMI) that are not in the DJIA; and
- 17 stocks that are the highest capitalized among the S&P 500 and are in neither the DJIA nor the XMI.

In SR-NYSE-88-30 and SR-NYSE-88-31, the Exchange noted that on any day when trading in any of the 50 highest-capitalized NYSE listed stocks in the S&P 500 index is halted during, or at the conclusion of, the so-called "sidecar" period specified in NYSE Rule 80A, and there is an imbalance in such stock of 50,000 shares or more, the size of the imbalance in such stock shall be disseminated.

The Exchange is proposing to use a single list for disseminating order imbalances on Expiration Fridays and for purposes of Exchange Rule 80A in order to avoid confusion, particularly if Rule 80A were to become effective on an Expiration Friday. The proposed single list consists of:

- 50 most highly capitalized stocks in the S&P 500; and
- Major Market Index (XMI) stocks that are not among the 50 most highly capitalized stocks in the S&P 500.

The Exchange believes that this single list should include the XMI stocks because the settlement price on the XMI is based on closing prices in the component stocks and should also include the S&P 500 stocks because these stocks account for a significant percentage of trading activity on the Exchange.

To the extent that the Exchange defined the list of stocks to be used when Exchange Rule 80A is in effect in SR-NYSE-88-30 and SR-NYSE-88-31, the Exchange is hereby proposing to amend that list to be defined as the "single list" described above. At the time of this filing, the single list would consist of 52 stocks.

(b) Statutory Basis

The basis under the Act for this proposed rule change is section 6(b)(5), which requires that rules of the Exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange has not solicited, and does not intend to solicit, comments regarding this proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The Exchange requests that the proposed rule change be granted accelerated effectiveness pursuant to section 19(b)(2) of the Act. In particular, the NYSE would like to be able to implement its revised procedures on Friday, December 16, 1988, which is the next quarterly Expiration Friday.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6 and the rules and regulations thereunder. Permitting entry of limit-at-the-opening orders when the NYSE's auxiliary opening procedures are in effect on quarterly Expiration Fridays will permit a broader range of orders to reach the specialist for execution. This should facilitate transactions in securities and help remove impediments to and perfect the mechanism of a free and open market.

The Commission also believes that the Exchange's use of a single list of stocks for disseminating order imbalances on Expiration Fridays and for purposes of Exchange Rule 80A should help avoid any unnecessary confusion that could arise from use of two different lists of stocks. Use of separate lists of stocks could be particularly disruptive if Rule 80A were to be implemented on an Expiration Friday. In addition, the criteria to be used by the NYSE to determine the stocks subject to order imbalance disseminations and to Rule 80A should enable the Exchange to include those stocks traded most actively on the NYSE and most likely to be traded as part of strategies involving the use of stock index derivative instruments.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof. The Exchange's proposed rule change is designed to govern trading during quarterly and monthly Expiration Fridays and during any other periods when market volatility is significant. Accordingly, it is important for the NYSE to be able to implement quickly and notify market participants about procedures that should have a positive impact on trading during the December 16 quarterly Expiration Friday.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549.

Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

*Secretary.*

Dated: December 15, 1988.

[FR Doc. 29335 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-26359; File No. SR-PSE-88-24]**

## Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Restructure of PSE Committees, and to Rules and Procedures of Those Committees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 26, 1988, the Pacific Stock Exchange, Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Pacific Stock Exchange Incorporated is proposing to modernize the provisions in the PSE Constitution that relate to committees, and to provide formalized rules and procedures for committees in a new and separate rule in the PSE Rules of the Board of Governors.

Article IV of the PSE Constitution currently lists ten committees. Of these ten, only seven are in existence. In addition, there are eighteen other committees that are in existence, but are not listed in either the Constitution or the Rules. Therefore, the Exchange proposes the following:

(a) To entirely replace Article IV of the Constitution with a new Article IV, and

(b) To create a completely new rule, Rule XXII, to provide for Board Committees, Equity Committees, Options Committees, and Exchange Committees, and to establish committee procedures and an appeals process for review of committee action.

Attached to the filing as Exhibit 1 is a copy of the proposed amendments to Article IV of the PSE Constitution and the proposed new rule, Rule XXII. Exhibit 1 is available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, and at the principal office of the PSE.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change**

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

*(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Changes*

(1) Purpose

Present language in Article IV of the Constitution identifies ten Standing Committees of the PSE.[1] The last time this Article was reviewed was in 1982 when Options Committees were added. Since that time, additional committees have been appointed to address changing needs of the PSE and its members.[2] However, these working committees are neither listed nor described in the Constitution or Rules of the PSE. Also, three of the ten committtees in the Constitution no longer exist.[3]

The purpose of this amendment is twofold: (1) To list and define committees as they operate today; and (2) to formalize the rules and procedures that affect all committees. The amendment reduces the number of committees in the Constitution to five, and places all other committees in a new rule, Rule XXII of the Rules of the Board of Governors.

The five committees to be listed in Article IV of the Constitution have continually been in existence at the PSE.[4] The proposed amendment to Article IV with respect to the Equity Allocation Committee provides that the Committee members may be associated with a specialist firm but may not be specialist, and that no two such persons associated with the same specialist firm may be members on the same intra-city arm of the Committee at the same time. In addition, the proposed amendments with respect to the Options Listing Committee provide that this Committee has rulemaking authority with respect to listing, delisting, allocation, and reallocation of options. The amendments delete the current requirement that the Options Listing Committee consist of at least five persons who are either Exchange members or representatives of members.

The remainder of committees will also be classified as "standing", but will become a part of the Rules and will be categorized into four types: Board, Equity, Options, and Exchange Committees.[5] The Constitution will continue to contain a brief description of powers and duties of the committee members, but more extensive definitions will be found in Rule XXII. This reorganization is consistent with most of the other exchanges.

Presently, every committee described in these amendments exists with the exception of the Membership Committee and the Market Performance Committee. Membership Committees have been appointed by the Board in the past to review specific policies or issues and to make recommendations to the Board. However, changes in membership composition and/or outmoded policies or rules regarding membership now require an outgoing Membership Committee. The Market Performance Committee replaces the Quality of Markets Committee as a Board Committee to review the overall regulation of the Exchange. In addition, the Market Performance Committee will review specialists' and market performance, oversee the evaluation process, and review capitalization of PSE members.[6]

Another purpose of these amendments is to formalize the process for selection and approval of committee members. This process will allow for broader membership participation on the committees. Near year-end, members will be given the opportunity to indicate whether they have an interest in joining a committee, and whether they have a preference for a specific committee.[7]

Finally, these amendments will allow a member to appeal the decision or action of a committee to the Board Appeals Committee. The appeals procedure is established as part of Rule XXII.[8] These amendments to Article IV of the PSE Constitution and Rule XXII of the Rules of the Board of Governors have been prepared by exchange staff and reviewed by the Board and PSE members.

(2) Basis

The proposed rule filing is consistent with section 6(b) of the Securities Exchange Act of 1934 in that, among other things, it will promote just and equitable principles of trade, and it is designed to protect the public investors and the public interest.

*(B) Self-Regulatory Organization's Statement on Burden on Competition*

PSE does not believe that the proposed change impose a burden on competition.

*(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others*

The proposed rule change to restructure the committees of the PSE, (herein referred to as the "Proposal"), are the result of an indepth study. The PSE conducted the study, which included significant contact with the members. Initially, PSE staff worked closely with certain committees to define the role of committees and their duties. Those committees were the Options Floor Trading Committee, the Ethics and Business Conduct Committee, and the Equity Floor Trading Committee. A Task Force of four PSE Governors (three of whom were PSE Floor members), was established to review the Proposal, and to make recommendations. Thereafter, in February 1988, the Proposal was mailed to each member for review and comment.

Comments were received from the members. The Task Force and PSE staff reviewed the members' comments, and

[1] Article IV, Section 1, provides that the Standing Committees of the Exchange shall consist of the Allocation Committee, Clearing Committee, Ethics and Business Conduct Committee, Floor Trading Committee, Listing Committee, Organization Review Committee, Options Floor Trading Committee, Options Listing Committee, Options Appointment Committee, and Public Relations Committee.

[2] The Exchange proposes to appoint an ongoing Membership Committee and to replace the Quality of Markets Committee with the Market Performance Committee. In addition, proposed new Rule XXII provides for a Specialist Committee, Audit Committee, Board Appeals Committee and Technology Services Committee under the heading of Board Committees; a National Market System Advisory Committee and an Equity Marketing Committee under the heading of Equity Committees; an Options Marketing Committee under the heading of Options Committees; and a Pension Committee, a Membership Committee and a New Products Committee under the heading of Exchange Committees.

[3] Neither the proposed amendments to the Constitution nor the New Rule XXII provides for a Clearing Committee, Organization Review Committee nor a Public Relations Committee.

[4] The proposed amended Article IV of the Constitution provides a brief description of the following: The Boards ability to delegate its authority to authorized committees, the duties of Exchange Committees in addition to those duties specifically designated, restrictions on interested members of a committee from participating in an adjudication, appointment of committee members, and the Equity Allocation Committee, the Equity Floor Trading Committee, the Options Listing Committee, the Options Floor Trading Committee, and the Ethics and Business Conduct Committee, and their respective duties.

[5] The Exchange proposed to move the Equity Listing Committee, which is currently listed in the Exchange's Constitution, to proposed New Rule XXII under the heading of Equity Committees, and to move the Options Appointment Committee, which is also currently listed under the Constitution, to proposed new Rule XXII under the heading of Options Committees.

[6] See Exhibit I, proposed Rule XXII, section 8(a).

[7] See Exhibit I, proposed Rule XXII, sections 1 (a), (b), and (c), and 6 (a) and (b).

[8] See Exhibit 1, proposed Rule XXII, section 7 (a) through (n).

made amendments to the Proposal. The Proposal was then approved by the Board of Governors on March 24, 1988.

The Proposal was resubmitted to the members on August 23, 1988, and the members were asked to vote on the changes to Article IV of the Constitution. Thereafter, the membership approved the Constitutional Amendment in the Proposal by the required 2/3 majority voting, and suggested additional changes to the Proposed Rule XXII. The additional changes were approved by the Board of Governors on September 22, 1988.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-88-20 and should be submitted by January 12, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 14, 1988.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29336 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

**[File No. 1-5519]**

## Issuer Delisting; Application To Withdraw From Listing and Registration; (CDI Corp., Common Stock, $.10 Par Value, American Stock Exchange)

December 15, 1988.

CDI Corp. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29339 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

**[Release No. IC-16692; File No. 812-7160]**

## The Equitable Life Assurance Society of the United States and Norman C. Francis; Filing of Application

December 14, 1988.

Notice is hereby given that The Equitable Life Assurance Society of the United States ("Equitable"), 787 Seventh Avenue, New York, NY 10019, and Norman C. Francis ("Francis"), 7325 Palmetto Street, New Orleans, LA 70125 (collectively, the "Applicants") have filed an application ("Application") requesting an order of the Commission pursuant to section 9(c) of the Investment Company Act of 1940, as amended (the "Act"). The requested order would grant Equitable, certain of its subsidiaries (Equico Securities, Inc.; Equitable Capital Management Corporation; Wood, Struthers and Winthrop Management Corporation; and any affected future subsidiary (collectively, "The Equitable Subsidiaries")), and Francis a permanent exemption from the prohibitions of sections 9(a) (2) and (3) of the Act, to the extent that these prohibitions are applicable to the Applicants by virtue of an injunction entered against Francis in 1979. Applicants request relief only to the extent necessary for Francis to serve as a director of Equitable.

The Application states that Equitable is a New York mutual life insurance company, a registered broker-dealer (under the Securities Exchange Act of 1934), and a registered investment adviser (under the Investment Advisers Act of 1940). Equitable is investment adviser, principal underwriter and depositor for investment companies and separate accounts (collectively, the "Accounts") that are registered under the Investment Company Act. The Equitable Subsidiaries are also, or may in the future be, investment advisers, principal underwriters and/or depositors of entities registered under the Act. Francis is the President of Xavier University of Louisiana, New Orleans, Louisiana. The Application states that Francis served as a director of Equitable from January 1, 1988, to July 7, 1988.

On February 7, 1979, the Commission filed a civil action against The Starr Broadcasting Group, Inc. ("SBG"), a national bank, and nine individuals who served or had served as SBG's board of directors, including Francis, who had been a non-officer director of SBG.[1]

[1] *SEC* v. *The Starr Broadcasting Group, Inc.*, Civil Action No. 79-0357 (D.D.C.).

Francis, without admitting or denying the allegations in the Commission's complaint, consented to the entry of an injunction against him. The order, which was entered on September 4, 1979, permanently enjoined Francis, while serving as an officer or director of any publicly held reporting company, from causing such company to file reports with the Commission which contravene applicable reporting requirements of the Securities Exchange Act of 1934 and from obtaining or extending credit in contravention of the margin rules of the Commission and the Federal Reserve Board.

Section 9(a)(2) of the Act applies to persons who, by reason of misconduct, have been enjoined from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security. Section 9(a) prohibits these persons from serving or acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of, or principal underwriter for, a registered investment company. Section 9(a)(3) extends these prohibitions to companies whose affiliated persons are subject to the prohibitions of section 9(a)(2).

Section 9(c) of the Act authorizes the Commission to grant exemptions from the prohibitions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis. Applications for exemption must establish that the prohibitions of section 9(a) are unduly or disproportionately severe as applied to the applicant, or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

Because of the injunction entered against Francis, the provisions of section 9(a) would preclude his service as a director of Equitable unless the relief requested pursuant to section 9(c) of the Act in the Application is granted. The Applicants submit that the prohibitions of section 9(a) of the Act would be unduly and disproportionately severe as applied to them, and that Francis' conduct has been such as to make it not against the public interest or the protection of investors to grant an exemption from its provisions.

In support of these contentions, Applicants submit that:

1. Over eight years have passed since the entry of the injunction against Francis. In that time, Francis has never been the subject of any other enforcement action by any regulatory body and has not, to his knowledge, been the subject of any governmental investigation involving violations of any laws.

2. At the time of the entry of the injunction, the Commission acknowledged that Francis did not benefit from the matters complained of and did not prepare the reports that gave rise to the injunction.[2]

3. By its terms, the injunction does not bar Francis from acting as an affiliated person of an investment adviser, depositor or principal underwriter.

4. Francis has fully complied with the terms of the injunction.

5. The Accounts have not been the subject of any enforcement action by any regulatory body.

6. Equitable has not been the subject of any enforcement action under the Federal securities laws.

7. The allegations of the complaint do not relate to the activities of Equitable or of the Accounts, or to any of Francis' activities in relation to Equitable or to the Accounts. Francis was not affiliated with Equitable at the time the activities alleged in the complaint took place.

8. When Francis was elected a director of Equitable neither he nor Equitable was aware of the need for an exemption under section 9(a) of the Act.

Based upon the foregoing, Applicants request that the Commission, pursuant to section 9(c) of the Act, grant the Applicants a permanent exemption from the provisions of section 9(a) to the extent applicable as a result of the injunction entered against Francis in 1979 and to the extent necessary to permit Francis to serve as a director of Equitable.

Applicants represent that they acknowledge, understand, and agree that the Commission's issuance of the order requested by the Application shall not prejudice nor limit the Commission's rights in any manner with respect to any investigation, enforcement action, or proceeding under section 9(b) of the Act, based, in whole or in part, upon conduct other than that giving rise to the Application.

Notice is further given that any interested person may, not later than January 13, 1989, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the Application, accompanied by a statement as to the nature of his or her interest, the reasons for such request, and the issues, if any, of fact or law proposed to be controverted. Any such request should be addressed to: Secretary, Securities and Exchange Commission, Washington, DC 20549. A copy of such request shall be served personally or by mail upon Applicants at the addresses stated above. Proof of such service (by affidavit or, in the case of an attorney, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the Rules and Regulations promulgated under the Act, an order disposing of the Application herein will be issued as of course following said date unless the Commission orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponement thereof.

By the Commission.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–29333 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission's litigation release states that the principal allegation against Francis in the complaint was that, while he did not benefit from the alleged transactions and while he did not personally prepare the reports of SBG filed with the Commission, he had a responsibility as a director to be sure that such reports complied with applicable federal securities laws.

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**[Release No. IC–16695; 811–4072]**

## Park Avenue New York Tax Exempt Money Market Fund, Inc.; Application for Deregistration

December 15, 1988.

**AGENCY:** Securities and Exchange Commission ("SEC").

**ACTION:** Notice of application for deregistration under the Investment Company Act of 1940 (the "1940 Act").

*Applicant:* Park Avenue New York Tax Exempt Money Market Fund, Inc. ("Applicant").

*Relevant 1940 Act Sections:* Deregistration under section 8(f).

*Summary OF Application:* Applicant seeks an order declaring that it has ceased to be an investment company subject to the 1940 Act.

*Filing date:* The application on Form N–8f was filed on August 5, 1988, and an amendment was filed on November 1, 1988 with a supplemental letter dated October 31, 1988.

*Hearing or Notification of Hearing:* If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on January 9, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicants with the request, either personally or by mail, and also send it to

the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

**ADDRESSES:** Secretary, SEC, 450 5th Street NW., Washington, DC 20549; Applicant: Park Avenue New York Tax Exempt Money Market Fund, Inc.: 666 Old Country Road, Garden City, New York 11530.

**FOR FURTHER INFORMATION CONTACT:** Bibb L. Strench, Staff Attorney, (202) 272–2856, or Karen L. Skidmore, Branch Chief, (202) 272–3023, Office of Investment Company Regulation.

**SUPPLEMENTARY INFORMATION:** The following is a summary of the application; proper terms are those defined in the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231–3282 (in Maryland (301) 258–4300).

**Applicants' Representations**

1. Applicant, a Maryland corporation, is registered as an open-end, non-diversified management investment company under the 1940 Act.

2. On July 19, 1984, Applicant filed a Notification of Registration pursuant to section 8 of the 1940 Act on Form N–8A and filed a registration statement under the 1940 Act on Form N–1A. The registration statement became effective on November 14, 1984. Applicant also registered under the Securities Act of 1933 an indefinite number of shares of common stock pursuant to Rule 24f–2 of the 1940 Act. Applicant's initial public offering commenced November 15, 1984.

3. The acquisition of Applicant by the Vista Fund was deemed to be in the best interests of each entity by their respective governing boards. The transaction enabled the Applicant's shareholders to derive the benefits offered to shareholders of the Vista Group which is a larger and more diverse family of funds than the Park Avenue fund had been. On February 24, 1988, the Board of Directors of the Applicant approved the terms of the reorganization. On April 22, 1988, pursuant to notice, a shareholders' meeting of the Applicant was held at which a majority of shareholders approved the reorganization.

4. As of April 29, 1987, Applicant's aggregate net assets were $236,950,457.63. On May 2, 1988, Applicant was party to a reorganization transaction which entailed the acquisition by the series of Mutual Fund Group designated as the Vista New York Tax Free Money Market Fund (the "Vista Fund") of all of the properties and assets, and the assumption of all of the liabilities, of the Applicant in exchange for an equal value of Vista Fund's shares of beneficial interest which were contemporaneously distributed to the shareholders of the Applicant. The exchange was done at net asset value as determined in accordance with Rule 2a–7 under the Act and the procedures set forth for valuation in each entities' respective governing instruments. The net asset value, offering price and redemption price per share was $1.00. The exact net asset value of the shares varied by some small degree from that exact amount, as permitted by Rule 2a–7. All portfolio securities of the Applicant were acquired by Vista Fund in connection with the reorganization and no brokerage commissions were paid with respect thereto. All portfolio securities were valued at their amortized cost. Vista Fund assumed all of Applicant's obligations and liabilities then existing, whether absolute, accrued, contingent or otherwise.

5. Expenses incurred in connection with the reorganization, including costs of printing and mailing the Proxy Statement/Prospectus and accounting and legal fees, were borne by Vista Fund and Applicant pro rata according to each fund's aggregate net assets on the date of the reorganization. Aggregate expenses were approximately $115,573. Of such amount, approximately $98,400 was allocated to Applicant and approximately $17,173 was allocated to Vista Fund.

6. As of the time of filing the application, Applicant have no security-holders. No assets have been retained by Applicant and no liabilities remain outstanding. Applicant is not a party to any litigation or administrative proceedings. It is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

7. Applicant filed a Certificate of Dissolution with the State of Maryland on May 2, 1988.

8. Applicant is current on its required filings, including its N–SAR filing.

For the Commission, by the Division of Investment Management, under delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88–29332 Filed 12–21–88; 8:45 am]

BILLING CODE 8010–01–M

**[File No. 1–8128]**

## Issuer Delisting; Application To Withdraw From Listing and Registration; (Pope, Evans and Robbins Incorporated, 13.5% Subordinated Debentures, Due 2002, American Stock Exchange)

December 15, 1988.

Pope, Evans and Robbins Incorporated ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2–2 (d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

On September 30, 1988, the Company completed an exchange offer whereby for each $1,000 principal amount of 13.5% Subordinated Debentures, due 2002, ("Debentures") tendered to and accepted by the Company for exchange the tendering holder of the Debentures received $1,000 principal amount of newly issued 7% Senior Notes due May 15, 1998, and 422.1 shares of Company's common stock, $.10 par value, pursuant to the terms of an Offering Circular, dated April 5, 1988.

The holders of more than 85% of the $35,000,000 aggregate principal amount of the Debentures then outstanding consented to the exchange offer and concomitant delisting of the Debentures by tendering the Debentures held by them in connection with the exchange offer. The Company now seeks to withdraw the Debentures from registration and listing on AMEX pursuant to the express terms of the exchange offer.

In the resolution approved by the Company's Board of Directors authorizing this application to delist the Debentures, the Company committed itself to use its best efforts to cause a registered broker-dealer to make a market in the Debentures or to cause such registered broker-dealer to advertise its willingness to purchase the Debentures until there are no longer any of the Debentures publicly held.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if

any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29341 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

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**[File No. 1-9345]**

### Issuer Delisting; Application To Withdraw From Listing and Registration; (The Taiwan Fund, Inc., Common Stock, $.01 Par Value, American Stock Exchange)

December 15, 1988.

The Taiwan Fund, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to remove the above specified security from listing and registration on the American Stock Exchange ("AMEX"). The Company recently listed and registered this security on the New York Stock Exchange ("NYSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

In making the decision to withdraw its common stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common shares on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 9, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rule of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

**Jonathan G. Katz,**

*Secretary.*

[FR Doc. 88-29340 Filed 12-21-88; 8:45 am]

BILLING CODE 8010-01-M

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## SMALL BUSINESS ADMINISTRATION

**[License No. 07/07-0093]**

### First of Nebraska Investment Corp.; Issuance of a Small Business Investment Company License

On September 2, 1988, a notice was published in the **Federal Register** (53 FR 31489) stating that an application has been filed by First of Nebraska Investment Corporation, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1988)) for a license as a small business investment company.

Interested parties were given until close of business November 2, 1988, to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to secion 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 07/07-0093 on November 25, 1988, to First of Nebraska Investment Corporation to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 14, 1988.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-29348 Filed 12-21-88; 8:45 am]

BILLING CODE 8025-01-M

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**[License No. 02/02-0486]**

### First New York Small Business Investment Co.; Revocation of License

Notice is hereby given that the license to operate a small business investment company under the Small Business Investment Act of 1958, as amended (the Act), issued to First New York Small Business Investment Company, 20 Squadron Boulevard, Suite 480, New York, New York 10956 has been revoked. First New York Small Business Investment Company was licensed by the Small Business Administration on December 30, 1985.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the revocation was effective on November 21, 1988, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 14, 1988.

**Robert G. Lineberry,**

*Deputy Associate Administrator for Investment.*

[FR Doc. 88-29347 Filed 12-21-88; 8:45 am]

BILLING CODE 8025-01-M

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## DEPARTMENT OF STATE

**[Public Notice CM-8/1250]**

### Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on Tuesday, 24 January 1989 in Room 6103 at U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593. The purpose of this special meeting is to continue development of U.S. positions for the upcoming International Maritime Organization (IMO) Diplomatic Conference on the Draft Salvage Convention scheduled to meet in London from 17-28 April 1989. The initial public meeting on this subject was held in Washington, DC, on 29 November 1988; a third and possibly final public meeting may be scheduled for late March/early April 1989.

In preparing for the Salvage Diplomatic Conference, four draft convention issues appear to be particularly important from the U.S. perspective:

1. The system established in Articles 10 and 11 ("Criteria for Assessing the Reward" and "Special Compensation") for sharing the cost of a new environmental incentive for salvors between shipowners and cargo interests;

2. The jurisdiction provisions in Article 21;

3. The present scope of the provision for exception by reservation in Article 24, the effect of which would be to require application of the convention to many offshore hydrocarbon exploration and production facilities; and

4. The absence of any exclusion from the convention for government-owned, non-commercial cargoes carried in other than government-owned vessels.

The foregoing issues, along with any other issues raised by participants, will be discussed extensively at this special

SHC meeting. The views of the public, and particularly those of affected maritime and environmental interests, are requested.

Members of the public are invited to attend the 24 January 1989 SHC meeting, up to the seating capacity of the room.

For further information pertaining to the issues to be discussed at the Shipping Coordinating Committee meeting or to submit views concerning the proposed Salvage Convention, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street SW., Washington, DC 20593, telephone (202) 267-1527, televax (202) 267-4165.

Date: December 13, 1988.

**Thomas J. Wajda,**

*Chairman, Shipping Coordinating Committee.*

[FR Doc. 88-29434 Filed 12-21-88; 8:45 am]

BILLING CODE 4710-07-M

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**[Public Notice CM-8/1251]**

## Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 2 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 18, 1989, at NASA Headquarters, 600 Independence Ave., Room 521J at 9:30 a.m. Study Group 2 deals with matters relating to the space research services among other things. The purpose of the meeting is to prepare for the Final Meeting of Study Group 2 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Mr. John Postelle, telephone 834-5607.

Date: December 19, 1988.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 88-29430 Filed 12-21-88; 8:45 am]

BILLING CODE 4710-07-M

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**[Public Notice CM-8/1247]**

## Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 5 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 6, 1989 at the University of Colorado Engineering Center, Room CR 1-42, from 9:00 a.m. to 12:00 noon. Study Group 5 deals with matters relating to the propagation of radio waves in non-ionized media. The purpose of the meeting is to prepare for the Final Meeting of Study Group 5 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Request for further information should be directed to Dr. John F. Cavanagh, Naval Surface Weapons Center, Code F405, Dahlgren, Va., 22338-5000, phone 703-663-8737.

Date: December 15, 1988.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 88-29431 Filed 12-21-88; 8:45 am]

BILLING CODE 4710-07-M

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**[Public Notice CM-8/1246]**

## Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 6 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on Saturday, January 7, 1989 at the U.S. Department of Commerce, Institute for Telecommunication Sciences, 325 Broadway, Boulder, Colorado. The meeting will begin at 9:00 a.m. in Room 1103.

Study Group 6 deals with matters relating to the propagation of radio waves in and through the ionosphere. The purpose of the meeting will be to discuss the status of the work of the Study Group for the 1989 Final Meeting.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Admittance of public members will be limited to the seating available.

Date: December 15, 1988.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 88-29432 Filed 12-21-88; 8:45 am]

BILLING CODE 4710-07-M

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**[Public Notice CM-8/1248]**

## Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR); Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will meet on January 11, 1989, and February 9, 1989, at the U.S. Naval Observatory, Room 300, Building 52, 34th and Massachusetts Avenue NW., Washington, DC. The meeting will begin at 9:30 a.m.

Study Group 7 deals with time-signal services by means of radiocommunications. The purpose of the meetings is to prepare for the Final Meeting of Study Group 7 in the Fall of 1989.

Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Requests for further information should be directed to Mr. Roger E. Beehler, National Institute of Standards and Technology, 325 Broadway, Boulder, CO 70303; phone (303)497-3281.

Date: December 15, 1988.

**Richard E. Shrum,**

*Chairman, U.S. CCIR National Committee.*

[FR Doc. 88-29433 Filed 12-21-88; 8:45 am]

BILLING CODE 4710-07-M

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**[Public Notice CM-8/1249]**

## The U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT), Study Group D; Meeting

The Department of State announces that Study Group D of the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) will meet on January 19 at 10:00 a.m. in Room 1912, Department of State, 2201 C Street NW., Washington, DC.

The purpose of the meeting is to report on the results of the IXth Plenary Assembly, Melbourne, Australia, insofar as Study Group D interests are concerned, develop U.S. positions concerning organization of Study Groups VII and XVII, and to prepare Contributions for the first meeting of Study Group XVII scheduled for 13-21 March, 1989, in Geneva, Switzerland. Any other business relevant to the new CCITT four year Plenary period may be considered as well.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting.

Prior to the meeting, persons who plan to attend should do so advise the office of Mr. Earl Barbely, State Department, Washington, DC, telephone (202) 647–5220. All attendees must use the C Street entrance to the building.

Dated: December 14, 1988.

**Earl S. Barbely,**

*Director, Office of Telecommunications and Information Standards; Chairman U.S. CCITT National Committee.*

[FR Doc. 88–29435 Filed 12–21–88; 8:45 am]

BILLING CODE 4710–07–M

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

### Reports, Forms, and Recordkeeping Requirements; Submittals to OMB on December 16, 1988

**AGENCY:** Office of the Secretary, Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** This notice lists those forms, reports, and recordkeeping requirements imposed upon the public which were transmitted by the Department of Transportation on December 16, 1988, to the Office of Management and Budget (OMB) for its approval in accordance with the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35).

**FOR FURTHER INFORMATION CONTACT:** John Chandler, Annette Wilson, or Cordelia Shepherd, Information Requirements Division, M–34, Office of the Secretary of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone, (202) 366–4735, or Gary Waxman or Sam Fairchild, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503, (202) 395–7340.

**SUPPLEMENTARY INFORMATION:**

#### Background

Section 3507 of Title 44 of the United States Code, as adopted by the Paperwork Reduction Act of 1980, requires that agencies prepare a notice for publication in the **Federal Register**, listing those information collection requests submitted to the Office of Management and Budget (OMB) for initial, approval, or for renewal under that Act. OMB reviews and approves agency submittals in accordance with criteria set forth in that Act. In carrying out its responsibilities, OMB also considers public comments on the proposed forms, reporting and recordkeeping requirements. OMB approval of an information collection requirement must be renewed at least once every three years.

#### Information Availability and Comments

Copies of the DOT information collection requests submitted to OMB may be obtained from the DOT officials listed in the "**FOR FURTHER INFORMATION CONTACT**" paragraph set forth above. Comments on the requests should be forwarded, as quickly as possible, directly to the OMB officials listed in the "For Further Information Contact" paragraph set forth above. If you anticipate submitting substantive comments, but find that more than 10 days from the date of publication are needed to prepare them, please notify the OMB officials of your intent immediately.

#### Items Submitted for Review by OMB

The following information collection requests were submitted to OMB on December 16, 1988.

*DOT No:* 3149.
*OMB No:* 2133–0013.
*Administration:* Maritime Administration.
*Title:* Monthly Report of Ocean Shipments Moving Under Export-Import Bank Financing.
*Need for Information:* To document the extent and nature of Export-Import Bank Financed shipping.
*Proposed Use of Information:* To determine whether Export-Import Bank Financed shipping is in conformance with U.S. Laws and Regulations.
*Frequency:* Monthly.
*Burden Estimate:* 126 hours.
*Respondents:* Ship operators and owners.
*Form(s):* MA–518.
*Average Burden Hours Per Respondent:* 30 minutes per response.

*DOT No:* 3150.
*OMB No:* 2133–0036.
*Administration:* Maritime Administration.
*Title*: Relative Cost of Shipbuilding in the Various Coastal Districts of the United States.
*Need for Information:* To satisfy Congressional requirement to report on the relative cost of construction or reconditioning of ocean vessels in domestic shipyards in U.S. Coastal areas.
*Proposed Use of Information:* To monitor cost differentials between coastal shipyards.
*Frequency:* Annually.
*Burden Estimate:* 70 hours.
*Respondents:* Shipyards.
*Form(s):* MA–939.
*Average Burden Hours Per Respondent:* 5 hours.

*DOT No:* 3151.
*OMB No:* 2120–0045.
*Administration:* Federal Aviation Administration.
*Title:* Bird Strike/Incident Report.
*Need for Information:* The information is needed to develop standards and monitor hazards to aviation.
*Proposed Use of Information:* The information is used to identify bird strike control requirements and provide in-service data on aircraft component failure.
*Frequency:* On occasion.
*Total Estimated Burden:* 120 total hours annually.
*Respondents:* Individuals.
*Form Number(s):* FAA Form 5200–7.
*Estimated Average Per Respondent:* 5 minutes per response.

*DOT No:* 3152.
*OMB No:* 2127–0541.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Owner's Manual Requirements—Motor Vehicle and Motor Vehicle Equipment, 49 CFR 571.108, 126, 205, 208, 210, Part 575.105.
*Need for Information:* To inform vehicle owners and passengers about the proper use of the vehicle or equipment.
*Proposed Use of Information:* Certain safety information which could benefit the vehicle owner or operator by reducing the risk of harm must be included in the vehicle owner's manual to provide for safe operation by users.
*Frequency:* On occasion.
*Burden Estimate:* 1,095 hours.
*Respondents:* Businesses/small businesses.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 121 minutes.

*DOT No:* 3153.
*OMB No:* 2127–0044.
*Administration:* National Highway Traffice Safety Administration.
*Title:* Name and Addresses of First Purchasers of Motor Vehicles.
*Need for Information:* To notify first purchasers of new motor vehicles in case their vehicle is recalled.
*Proposed Use of Information:* Motor vehicle manufacturers are required to record and retain the names and addresses of first purchasers of new motor vehicles, so that the manufacturer can directly notify those persons if the vehicle is recalled.
*Frequency:* On occasion.
*Burden Estimate:* 1,000,000.
*Respondents:* 15,000,000.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 3 minutes.

*DOT No:* 3154.
*OMB No:* 2127–0039.
*Administration:* National Highway Traffic Safety Administration.
*Title:* 49 CFR Part 557, Petitions for Hearings.
*Need for Information:* Gives persons who believe manufacturers have been deficient in notifying the public of a safety related defect or noncompliance.
*Proposed Use of Information:* This regulation establishes procedures for any person to petition the agency for a hearing to determine whether a manufacturer has met its obligation to notify vehicle owners of a defect or noncompliance and whether the remedy has been satisfactory.
*Frequency:* On occasion.
*Burden Estimate:* 21 hours.
*Respondents:* 21.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 60 minutes.

*DOT No:* 3155.
*OMB No:* New.
*Administration:* Office of the Secretary.
*Title:* Supporting Statements—Air Carrier claims for subsidy payments.
*Need for Information:* Required to submit forms in order to determine subsidy payments to air carriers.
*Proposed Use of Information:* To keep as a record for the present and the future use.
*Frequency:* Monthly.
*Burden Estimate:* 1578 hours.
*Respondents:* U.S. Air carriers who are in the 419 subsidy program.
*Form(s):* 397 and 398.
*Average Burden Hours Per Respondent:*

Form 397 1 hour 15 minutes
Form 398 30 minutes.

*DOT No:* 3156.
*OMB No:* New.
*Administration:* U.S. Coast Guard.
*Title:* Labeling Required in 33 CFR 181 and 183.
*Need for Information:* The Information is needed to: (1) Provide safety information to the boating public; (2) evidence compliance with applicable regulations; (3) provide information to manufacturers, dealers and installers of associated equipment on recreational boards; and (4) uniquely identify each boat which aids in the recovery of stolen boats.
*Proposed Use of Information:* This information is used to identify the boat manufacturer or importer and to ensure that safety standards are complied with.
*Frequency:* On occasion.
*Burden Estimate:* 164,494.
*Respondents:* Boat manufacturers and importers.
*Form(s):* None.
*Average Burden Hours Per Respondent:* varies from .08 for labeling to 20 hours for testing.

*DOT No:* 3157.
*OMB No:* New.
*Administration:* Research and Special Programs Administration.
*Title:* Control of Drug Use in Natural Gas Liquefied Natural Gas, and Hazardous Liquid Pipeline Operations.
*Need for Information:* Assure compliance with anti-drug program requirements.
*Proposed Use of Information:* Plans and records would be reviewed by agency personnel to assure conformity with anti-drug program requirements and to determine program effectiveness.
*Frequency:* An anti-drug plan would be prepared one time, and records would be kept of each test and training exercise.
*Burden Estimate:* 71,000 hours.
*Respondents:* 2200.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 1 hour.

*DOT No:* 3158.
*OMB No:* 2115–0100.
*Administration:* U.S. Coast Guard.
*Title:* Shipment of Hazardous Bulk Solids.
*Need for Information:* This information collection is needed in compliance with the laws and regulations for safe transportation and stowage of hazardous solid bulk cargoes. It is needed to (1) determine the physical and chemical properties of materials to be shipped for proper classification of the new cargo; (2) to study the experience of the manufacturer in handling the materials; and (3) to determine the recommended safety precautions to use in preparing the special permit.
*Proposed Use of Information:* The Coast Guard requires Shipping Papers for barges and vessels and Dangerous Cargo Manifests for vessels for the following reasons: (1) To inform the shipper, handlers and persons in charge of the shipment of the nature and quantity of the hazardous materials being transported; (2) to provide the Coast Guard inspectors the information needed to make certain that proper safety precautions and safe stowage requirements are being observed; and, (3) to allow for necessary emergency responses if problems of a hazardous nature should develop.
*Frequency:* On occasion.
*Burden Estimate:* 1346.
*Respondents:* Solid Bulk Cargo Vessel Owners/Operators.
*Form(s):* None.
*Average Burden Hours Per Respondent:* .6747 hours.

*DOT No:* 3159.
*OMB No:* 2138–0016.
*Administration:* Research and Special Programs Administration.
*Title:* Report of Extension of Credit to Political Candidates.
*Need for Information:* Monitor credit practices by certificated air carriers to political candidates.
*Proposed Use of Information:* Reports are made by DOT and sent to the Federal Elections Commission.
*Frequency:* Monthly.
*Burden Estimate:* 20 hours.
*Respondents:* Certificated Air Carriers.
*Form(s):* Form 183.
*Average Burden Hours Per Respondent:* 1 hour.

*DOT No:* 3160.
*OMB No:* 2138–0006.
*Administration:* Research and Special Programs Administration.
*Title:* Part 249—Presentation of Air Carrier Records.
*Need for Information:* Retention periods are prescribed only for records that support specific regulatory needs.
*Proposed Use of Information:* Audit for mail rate, continuing fitness and consumer protection purposes.
*Frequency:* None (record retention requirement) retention periods 30 days to 3 years.
*Burden Estimate:* 556 hours.
*Respondents:* Certified air carriers and charter operators.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 1.65 hours.

*DOT No:* 3161.
*OMB No:* 2138–0009.
*Administration:* Research and Special Programs.
*Title:* Form 298–C Report of Financial and Operating Statistics for Small Aircraft operators.
*Need for Information:* Establish Essential Air Service (EAS) Levels, EAS Subsidy rates, Alaskan mail rate, allocate funds for airport development and monitor carriers fitness.
*Proposed Use of Information:* To help manage the EAS program, the Mail Rate Program and allocate funds for airport development.
*Frequency:* Quarterly.
*Burden Estimate:* 8002 hours.
*Respondents:* Small certificated and commuter air carriers.
*Form(s):* RSPA Form 298–C.
*Average Burden Hours Per Respondent:* 3 hours.

*DOT No:* 3162.

*OMB No:* New.
*Administration:* Federal Highway Administration.
*Title:* Controlled Substances.
*Need for Information:* To meet Federal Highway Administration requirements for Motor Carriers to test their drivers for drug use and for drivers to be tested for drugs after an accident.
*Proposed Use of Information:* For the Federal Highway Administration to measure the magnitude of the drug problem affecting highway safety.
*Frequency:* Recordkeeping 3 years.
*Burden Estimate:* 1,053,961.
*Respondents:* Motor Carriers.
*Form(s):* N/A.
*Average Burden Hours Per Respondent:* 5.2 hours for each recordkeeping.

*DOT No.:* 3163.
*OMB No.:* New.
*Administration:* National Highway Traffic Safety Administration.
*Title:* Replaceable Light Source Dimensional Information Submission Requirements for Motor Vehicle Equipment and Headlamp Aiming Instruction Labels.
*Need for Information:* To eliminate design restrictions on size and shape of headlamp bulbs and provide instruction labels for the headlight aiming devices.
*Proposed Use of Information:* Manufacturers are required to provide vehicle lighting on all motor vehicles and equipment and give instructions for placing labels on vehicle aiming devices. Provide information on new headlamp bulbs for replacement and interchangeability purposes.
*Frequency:* On occasion.
*Burden Estimate:* 4,052.
*Respondents:* Manufacturers.
*Form(s):* None.
*Average Burden Hours Per Respondent:* 0.17 minutes.

*DOT No.:* 3164.
*OMB No.:* New.
*Administration:* Federal Aviation Administration.
*Title:* Anti-drug Program for Personnel Engaged in Specified Aviation Activities.
*Need for Information:* The FAA needs to exercise oversight of the establishment of individual programs to ensure their effectiveness. The information is needed by the FAA to monitor the program.
*Proposed Use of Information:* The information will be used by the FAA to monitor the programs, summarize trends, and make recommendations for change when necessary.
*Frequency:* One time and semi-annually.
*Burden Estimate:* 377,707 hours.
*Respondents:* Commercial aviation operators.
*Form(s):* None.
*Average Burden Hours Per Respondent:* For the one time plan submission, 45 hours, and for the recurring semi-annual report, 10 hours.

*DOT No.:* 3165.
*OMB No.:* 2115–0544.
*Administration:* U.S. Coast Guard.
*Title:* Advance Notice of Need for Reception Facilities.
*Need for Information:* This information collection requirement is needed to ensure that the Coast Guard establishes regulations for determining the adequacy of reception facilities at ports and terminals. It is also used to establish procedures whereby persons in charge of ports and terminals may request the Secretary to certify the adequacy of facilities. The reception facilities are needed to receive waste not discharged at sea.
*Proposed Use of Information:* The information is used to determine when ships require reception facilities and to make such facilities available. This requirement is in lieu of requiring that terminals and personnel be available on a consistent basis, thereby reducing operating costs on the public.
*Frequency:* On occasion.
*Burden Estimate:* 1,256 hours.
*Respondents:* Oceangoing ships requiring oil, noxious liquid substance or garbage reception facilities at U.S. ports.
*Form(s):* None.
*Average Burden Hours Per Respondent:* .25 minutes.

*DOT No.:* 3166.
*OMB No.:* New.
*Administration:* U.S. Coast Guard.
*Title:* Chemical Drug and Alcohol Testing of Commercial Vessel Personnel.
*Need for Information:* This information collection requirement is needed to enforce the recently enacted drug testing laws.
*Proposed Use of Information:* Coast Guard will use this information to identify users of dangerous drugs in the U.S. Merchant Marine industry. It is also used to determine whether an individual is qualified to receive a license, certificate of registry or merchant marine documents under the periodic testing program.
*Frequency:* On occasion.
*Burden Estimate:* 8,864 hours.
*Respondents:* Individuals and marine employers.
*Form(s):* CG–2692B.
*Average Burden Hours Per Respondent:* .52 hours.

*DOT No.:* 3167.
*OMB No.:* 2106–0009.
*Administration:* Office of the Secretary, Tariffs Division.
*Title:* Part 221—Construction, Publication, Filing and Posting of Tariffs of Air Carriers and Foreign Air Carriers.
*Need for Information:* Section 403, Federal Aviation Act of 1958, as amended, requires that all air carriers and foreign air carriers file with the DOT, and post for public inspection, tariffs containing fares, rates and changes which apply to international air transportation.
*Proposed Use of Information:* Tariffs filed are used by carriers, travel agents, DOT, other government agencies and general public to determine the fares, rates and charges for international air transportation.
*Frequency:* As necessary.
*Burden Estimate:* 2,298,298.
*Respondents:* Air carriers and/or their agents.
*Form(s):* N/A.
*Average Burden Hours Per Respondent:* 5 hours, 51 minutes.

Issued in Washington, DC on December 16, 1988.

**Robert J. Woods,**
*Director of Information Resource Management.*

[FR Doc. 88–29421 Filed 12–21–88; 8:45 am]
BILLING CODE 4910–62–M

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**[Order 88–12–37]**

## Fitness Determination of Horizon Air, Inc. d/b/a Mohawk Airlines

**AGENCY:** Department of Transportation.

**ACTION:** Notice of commuter air carrier fitness determination order to show cause.

**SUMMARY:** The Department of Transportation is proposing to find Horizon Air, Inc. d/b/a Mohawk Airlines fit, willing, and able to provide commuter air service under section 419(c)(2) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P–56, Department of Transportation, 400 Seventh Street SW., Room 6420, Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than January 3, 1989.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carol A. Woods, Air Carrier Fitness

Division (P–56, Room 6420), U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366–2340.

Dated: December 19, 1988.

**Gregory S. Dole,**

*Assistant Secretary for Policy and International Affairs.*

[FR Doc. 88–29422 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–62–M

## Coast Guard

[88–099]

### Rules of the Road Advisory Council; Membership Applications

**AGENCY:** Coast Guard, DOT.

**ACTION:** Request for applications.

**SUMMARY:** The U.S. Coast Guard is seeking applications for appointment to membership on the Rules of the Road Advisory Council. This Council was established under the Inland Navigational Rules Act of 1980 (33 U.S.C. 2073) to advise, consult with, and make recommendations to the Secretary of Transportation on matters relating to the Inland Navigation Rules and the International Regulations for Preventing Collisions at Sea (72 COLREGS).

**DATES:** Requests for applications should be received by the Coast Guard no later than January 15, 1989. Applications must be completed and returned to the Coast Guard no later than February 15, 1989.

**ADDRESS:** Persons interested in applying should write to Commandant (G–NSR–3), U.S. Coast Guard Headquarters, 2100 Second St., SW., Washington, DC 20593–0001.

**FOR FURTHER INFORMATION CONTACT:** Commander Tom Meyers, Executive Director, Rules of the Road Advisory Council, (G–NSR–3), Room 1416, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–0354.

**SUPPLEMENTARY INFORMATION:** In June 1989, there will be seven vacancies on the 21-member Council. The seven appointments will be made by the Secretary of Transportation. The Coast Guard will accept applications received after the publication of this notice and before February 15, 1989, and thereafter make recommendations to the Secretary. Under the Inland Navigation Rules Act and to assure balanced representation, members shall be chosen, insofar as practical, from the following groups: (1) Recognized experts and leaders in organizations having an active interest in the Rules of the Road and vessel and port safety, (2) representatives of owners and operators of vessels, professional mariners, recreational boaters, and the recreational boating industry, (3) individuals with an interest in marine law, and (4) Federal and state officials with responsibility for vessel and port safety."

Since its establishment, the Council has met at least yearly at various sites in the continental United States. Members are entitled to receive per diem in lieu of subsistence, as well as to be reimbursed for travel expenses, in accordance with current regulations. The seven new appointments will expire three years from June 1989.

Date: December 14, 1988.

**R.T. Nelson,**

*Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.*

[FR Doc. 88–29406 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–14–M

## Federal Highway Administration

### Environmental Impact Statement: Cass County, ND, Clay County, MN

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice of intent.

**SUMMARY:** The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Fargo, North Dakota, and Moorhead, Minnesota.

**FOR FURTHER INFORMATION CONTACT:** John C. Kliethermes, Division Administrator, Federal Highway Administration, P.O. Box 1755, Bismarck, ND 58502. Telephone Number is (701) 250–4204. (FTS 783–4204).

**SUPPLEMENTARY INFORMATION:**

The FHWA, in cooperation with the North Dakota State Highway Department, will prepare an Environmental Impact Statement (EIS) on a proposal for improvements to the I–94 Corridor in Fargo, North Dakota, and Moorhead, Minnesota.

The proposed project consists of:

1. Rehabilitation of the roadways from just west of Horace Road to US 75.

2. Interchange modifications at Horace Road and I–29.

3. New interchange at 45th Street and 25th Street.

4. Six laning of I–94 from I–29 to US 75. Also under consideration are noise barriers from I–29 to US 75.

Alternatives under consideration include taking no action, which would leave the existing facility to carry the projected traffic increases.

At Horace Road, two interchange modifications are presented. Both involve upgrading the ramps and tapers.

Three interchange revisions are presented for I–94/I–29 interchange. They involve revising the ramps and loops to improve safety and operational characteristics.

At 45th Street, two interchange plans are presented. Both are diamonds with one being skewed to avoid a farmstead and a railroad.

At 25th Street, three interchange plans are presented. One is a diamond. Another is a modified diamond with the southeast ramp removed and replaced with a loop in the southwest quadrant. The third is also a modified diamond with the southeast ramp removed and loops installed in the southwest and northeast quadrants.

Letters soliciting views and comments on the proposed project were sent to various Federal, state and local agencies. The project has been discussed at local meetings in Fargo.

An Environmental Assessment was prepared and a public hearing was held. Due to public concerns about noise, it was decided to prepare a DEIS.

The Draft EIS will be available for public and agency review and comment. Notice of availability for a public hearing will be made. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed aciton are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on federal programs and activities apply to this program.)

Issued on December 12, 1988.

**John C. Kliethermes,**

*Division Administrator, Federal Highway Administration.*

[FR Doc. 88–29408 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–22–M

## National Highway Traffic Safety Administration

### Rear Seat Lap/Shoulder Belt Retrofit Kits; Request for Information

**SUMMARY:** The purpose of this Notice is to request information from vehicle manufacturers on current availability,

future availability and cost of rear seat/lap shoulder belt retrofit kits. The information gained will be incorporated into an agency report to the Congress on the retrofitting of vehicles with rear seat lap/shoulder belts.

**DATE:** Comments must be received on or before January 26, 1989.

**ADDRESSES:** Comments should be submitted to Barry Felrice, Associate Administrator for Rulemaking, NRM–01, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Lillvian Jones-Bixler, Special Projects Staff, NRM–011, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone: (202) 366–4929.

**SUPPLEMENTARY INFORMATION:** Federal Motor Vehicle Safety Standard No. 210 requires that seat belt anchorages for a Type 2 seat belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars other than convertibles, and for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 in vehicles other than passenger cars. This requirement makes it possible for consumers to retrofit their vehicles with lap/shoulder belts in the rear seat, if desired.

The Congress, in an Appropriation Committee Report, (H.R. Rep. No. 957, 100th Cong., 2d. Sess., at 28, 29. (1988)), requested that NHTSA prepare a report which includes, among other items, the following information:

1. A comprehensive survey of vehicle manufacturers to determine all vehicle makes and models for which aftermarket retrofit assemblies are available to the general public.

2. A timetable for the availability of retrofit kits from each manufacturer that does not presently make such kits available.

3. An analysis of actions each manufacturer has taken to distribute retrofit kits and installation instructions to dealers and other potential installers.

To gain this information, NHTSA asks that motor vehicle manufacturers provide answers and comments to the following questions.

**Current Availability of Retrofit Kits**

1. Please list by make, model and model year all vehicles for which your company has available rear seat lap/shoulder belt retrofit kits.

2. Please list dates when you began to provide rear seat lap/shoulder belt retrofit kits by make, model and model year to your dealerships.

3. Please describe the types of retrofit kits you have available by including such information as: Are the belts in the retrofit kits retractable; do you offer retrofit kits which have belts color coded to the interior of the vehicles; are the retrofit kits equipped with a separate shoulder belt assembly or a shoulder and lap belt assembly?

4. How many retrofit kits did you sell during Calendar Year 1987? During Calendar Year 1988? Have you had orders that you could not fill? If so, why not?

5. Have your rear seat lap/shoulder belt retrofit systems been laboratory tested to determine their effectiveness?

6. Has your company made any efforts to inform the general public of the availability of rear seat lap/shoulder belt retrofit kits? If so, what have you done?

**Future Availability of Retrofit Kits**

7. For those vehicles for which you do not currently provide retrofit kits, are there any plans to do so? Please provide estimated dates by make, model and model year as to when you will provide retrofit kits for those vehicles.

8. Please indicate make, model and model year of vehicles for which you will not provide a rear seat lap/shoulder belt retrofit kit. Why will you not provide retrofit kits for these vehicles?

**Distribution and Installation of Retrofit Kits**

9. Once a dealer places an order for a year seat lap/shoulder belt retrofit kit, what is the average delivery time to the dealership?

10. May dealerships order rear seat lap/shoulder belt retrofit kits from the seat belt manufacturers directly?

11. Does your company provide rear seat lap/shoulder belts to other than new car dealerships (e.g., used car dealerships) if requested? If not, why not?

12. Do you provide information to your dealerships on how to retrofit vehicles with rear seat lap/shoulder belts without being requested to do so? If not, do you provide this information upon request?

13. Has your company ever received any comments from the dealers or consumers on the ease or difficulty of the installation or use of the retrofit belts? If so, what were they?

14. Please submit copies of the installation instructions used in the rear seat lap/shoulder belt retrofit kits by make, model and model year.

15. Are copies of these instructions available to individual purchasers of retrofit kits?

16. Has your company received any consumer complaints on the unavailability of rear seat lap/shoulder belt retrofit kits? How many complaints and of what nature?

17. What is the manufacturer's suggested retail price for rear seat lap/shoulder belt retrofit kits, by make, model, and model year?

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the address shown in the ADDRESS heading at the beginning of this notice. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

Issued On: December 19, 1988.

**Barry Felrice,**

*Associate Administrator for Rulemaking.*

[FR Doc. 88–29405 Filed 12–21–88; 8:45 am]

BILLING CODE 4910–59–M

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## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1954, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott [within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954]. The list is the same as the prior quarterly list published in the **Federal Register.**

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1954).

Bahrain
Iraq
Jordan
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Arab Republic
Yemen, Peoples Democratic Republic of

Date: December 15, 1988.

**O. Donaldson Chapoton,**

*Assistant Secretary for Tax Policy.*

[FR Doc. 88–29382 Filed 12–21–88; 8:45 am]

BILLING CODE 4810–25–M

# Sunshine Act Meetings

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, January 6, 1988.

**PLACE:** 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–29465 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, January 13, 1988.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 29466 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, January 20, 1988.

**PLACE:** 2033 K Street, NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 88–29467 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

**COMMODITY FUTURES TRADING COMMISSION**

**TIME AND DATE:** 11:00 a.m., Friday, January 27, 1988.

**PLACE:** 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Surveillance Matters.

**CONTACT PERSON FOR MORE INFORMATION:** Jean A. Webb, 254–6314.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 29468 Filed 12–20–88; 11:05 am]

BILLING CODE 6351-01-M

**FEDERAL DEPOSIT INSURANCE CORPORATION**

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:11 a.m. on Monday, December 19, 1988, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to: (1) Recommendations regarding the Corporation's assistance agreement with an insured bank; (2) an assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act; and (3) the Corporation's corporate activities.

The Board also considered certain personnel matters.

In calling the meeting, the Board determined, on motion of Director C.C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(i), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: December 19, 1988.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

[FR Doc. 88–29454 Filed 12–20–88; 11:04 am]

BILLING CODE 6714-01-M

**FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS**

**TIME AND DATE:** 9:30 a.m., Tuesday, December 20, 1988.

The business of the Board required that this meeting be held with less than one week's advance notice to the public, and no earlier announcement of the meeting was practicable.

**PLACE:** 20th Street and Constitution Avenue, NW., Washington, DC 20551.

**STATUS:** Closed.

**MATTERS TO BE CONSIDERED:** Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Date: December 20, 1988.

**James McAfee,**

*Associate Secretary of the Board.*

[FR Doc. 88–29522 Filed 12–20–88; 3:22 pm]

BILLING CODE 6210-01-M

**POSTAL SERVICE**

Board of Governors; Meeting

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 CFR 7.5) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, January 10, 1989, in the Benjamin Franklin Room, U.S. Postal Service Headquarters, 475 L'Enfant Plaza, SW., Washington, DC. The meeting is open to the public. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268–4800.

There will also be a session of the Board on Monday, January 9, 1989, but it will consist entirely of briefings and is not open to the public.

**Agenda**

*Tuesday Session*

January 10—8:00 a.m. (Open)

1. Minutes of the Previous Meeting, December 5–6, 1988.
2. Remarks of the Postmaster General.
3. Annual Report on Open Meeting Compliance (Sunshine Act). (David F. Harris, Secretary to the Board of Governors)
4. EEO/Affirmative Action Report. (Sherry A. Cagnoli, Executive Director, Office of Equal Employment Opportunity)
5. Annual Report of the Postmaster General. (Frank S. Johnson, Jr., Assistant Postmaster General, Communications Department)
6. Election of Chairman and Vice Chairman.
7. Tentative Agenda for February 6–7, 1989, meeting in Miami, Florida.

**David F. Harris,**

*Secretary.*

[FR Doc. 88–29453 Filed 12–20–88; 11:04 am]

BILLING CODE 7710–12–M

# Corrections

Federal Register
Vol. 53, No. 246
Thursday, December 22, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

## THE PRESIDENT

**3 CFR**

### Proclamation 5923 of December 14, 1988; To Implement the United States-Canada Free-Trade Agreement

*Correction*

In Presidential document 88-29118 beginning on page 50638 in the issue of Friday, December 16, 1988, make the following correction:

On page 50640, the file line, "Filed 12-14-88; 4:29 pm]", should be removed. On page 50910, at the bottom of the page, the file line should read "[FR Doc. 88-29118 Filed 12-14-88; 4:29 pm]".

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

**[OPP-64010; FRL-3479-1]**

### Intent To Cancel Certain Pesticide Registrations

*Correction*

In notice document 88-26725 beginning on page 46816 in the issue of Friday, November 18, 1988, make the following corrections:

1. On page 46818, in the first column, in the ninth line from the bottom, "04402" should read "94402".

2. On page 46822, in the second column, in the first line "51972-1" should read "41972-1".

3. On the same page, in the third column, in the 11th line, "43321-1" should read "43321-2".

4. On the same page, in the same column, in the 35th line, "43717-27" should read "43717-1-2".

5. On page 46823, in the third column, in the 44th line, "4625-1" should read "46265-1".

6. On page 46824, in the second column, in the seventh line from the bottom, "Stanley" was misspelled.

BILLING CODE 1505-01-D

## ENVIRONMENTAL PROTECTION AGENCY

### Office of Pesticides and Toxic Substances

**[OPTS-62070; FRL-3482-6]**

### Asbestos-Containing Materials in Schools; EPA Approved Courses and Accredited Laboratories Under the Asbestos Hazard Emergency Response Act (AHERA)

*Correction*

In notice document 88-27325 beginning on page 48424 in the issue of Wednesday, November 30, 1988, make the following corrections:

1. On page 48425, in the 2nd column, under **II. EPA Approval of Training Courses**, in the 4th paragraph, in the 11th line, "affect" should read "effect".

2. On page 48427, in the second column, in the third line, "11/30/87" should read "10/30/87".

3. On page 46428, in the 1st column, in the 21st line, "Laborer" should read "Laborer's".

4. On page 48430, in the 1st column, in the 3rd line, "7/8/86" should read "12/8/86"; in the 18th line, "Course" should read "Courses"; and in the 9th line from the bottom, "Courses" should read "Course".

5. On page 48432, in the 1st column, in the 30th line, "Niagara" was misspelled.

6. On page 48435, in the 2nd column, in the 36th line, "6/6/86" should read "6/6/88".

7. On page 48437, in the 1st column, in the 12th line, "Heath" should read "Health".

8. On page 48438, in the 1st column, in the 18th line from the bottom, "Contract" should read "Contractor".

9. On the same page, in the 2nd column, in the 15th line, "(212) 874-7348" should read "(219) 874-7348".

10. On the same page, in the third column, in the fifth line, "Courses" should read "Course".

11. On page 48440, in the second column, in the second line, "60606-01-98" should read "60606-0198".

12. On page 48441, in the 2nd column, after the 11th line, insert the following text:

(b) *Approved Course:* Abatement worker (contingent from 9/1/88).

13. On page 48446, in the 3rd column, in the 11th and 12th lines from the bottom, "2/30/87" should read "12/30/87".

14. On page 48449, in the 2nd column, in the 24th line, "20C-404" should read "20C-204".

15. On the same page, in the third column, in the bottom line, the paragraph designation "(6)" should read "(7)".

16. On page 48465, in the third column, in the ninth line from the bottom, "Million" should read "Millien".

17. On page 48467, in the 3rd column, in the 34th and 35th lines, "Service Ind." should read "Testing Labs".

BILLING CODE 1505-01-D

## FEDERAL COMMUNICATIONS COMMISSION

**47 CFR Part 95**

**[PR Docket No. 87-265; FCC 88-318]**

### Amendment of Subparts A and E of Part 95 to Improve the General Mobile Radio Service (GMRS)

*Correction*

In rule document 88-27111 beginning on page 47711 in the issue of Friday, November 25, 1988, make the following corrections:

**§ 95.5 [Corrected]**

1. On page 47714, in the 3rd column, in § 95.5 introductory text, in the 4th line, "or" should read "of"; and in the 10th line, "license" should read "licenses".

**§ 95.25 [Corrected]**

2. On page 47715, in the first column, in § 95.25(e)(1), in the third line, "tree or which" should read "tree on which".

**§ 95.71 [Corrected]**

3. On page 47716, in the second column, in § 95.71(f), in the second line, "or" should read "of".

4. On page 47717, in the third column, after amendatory instruction 30, the section heading should read

**"§ 95.179 Individuals who may be station operators".**

BILLING CODE 1505-01-D

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

[Docket No. 88F-0317]

### Ciba-Geigy Corp.; Filing of Food Additive Petition

*Correction*

In notice document 88-24762 appearing on page 43272 in the issue of Wednesday, October 26, 1988, make the following correction:

In the first column, under **FOR FURTHER INFORMATION CONTACT**, in the fourth and fifth lines, "202-473-5690" should read "202-472-5690".

BILLING CODE 1505-01-D

## DEPARTMENT OF THE INTERIOR

### Bureau of Land Management

[AZ-920-07-4212-13; A-22844-A]

### Arizona; Exchange of Federal and Private Mineral Estate

*Correction*

In notice document 88-27093 beginning on page 47584, in the issue of Wednesday, November 23, 1988, make the following corrections:

1. On page 47584, in the second column, under T. 10 N., R. 26 E., the seventh line should read "Sec. 26, W½NE¼, S½NW¼, W½SW¼,".

2. On page 47585, in the first column, under T. 13 N. R. 31 E., the first line should read "Sec. 19, lots 3 and 4, E½SW¼, SE¼;".

BILLING CODE 1505-01-D

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1140

[Ex Parte No. 402]

### Reasonably Expected Costs; Implementation of the Railroad Accounting Principles Board Findings

*Correction*

In rule document 88-28599 beginning on page 49990 in the issue of December 13, 1988, make the following correction:

**§ 1140.2 [Corrected]**

On page 49990, in the third column, amendatory instruction 2 should read, "2. Section 1140.2 is amended by revising paragraphs (b)(7)(i), (7)(ii) introductory text, (7)(ii)(B)-(F), (7)(iii), (12)(i), (12)(ii) introductory text, (12)(ii)(B)-(E), and (12)(iii) to read as follows:"

BILLING CODE 1505-01-D

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

### MET Electrical Testing Company, Inc.; Application for Recognition

*Correction*

In notice document 88-28064 beginning on page 49258 in the issue of Tuesday, December 6, 1988, the heading was incorrect and should appear as set forth above.

BILLING CODE 1505-01-D

federal register

Thursday
December 22, 1988

Part II

# Department of Transportation

**Federal Aviation Administration**

**14 CFR Part 93**

**High Density Traffic Airports Slot Allocation and Transfer Methods; Notice of Proposed Rulemaking**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 93**

**[Docket No. 25758; Amdt. No. 93-56]**

## High Density Traffic Airports; Slot Allocation and Transfer Methods

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation, (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This notice proposes to amend the Federal Aviation Regulations relating to the allocation and transfer of air carrier and commuter operator slots (i.e., instrument flight rules (IFR) takeoff and landing reservations) at Kennedy International Airport, LaGuardia Airport, O'Hare International Airport, and Washington National Airport. This proposal would increase the percentage of use required in order to retain allocated slots in certain circumstances. The proposed amendment would also permit withdrawal of slots, for international and other purposes, from carriers with fewer than 8 slots at an airport if the slots were not used by that carrier. This notice also requests information on the need for further changes to the slot allocation and transfer rules in accordance with recent legislation.

**DATE:** Comments must be received on or before February 6, 1989.

**ADDRESS:** Comments on this regulation may be mailed in triplicate to:

Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 25758, 800 Independence Avenue SW., Washington, DC 20591.

or delivered in triplicate to:

FAA Rules Docket, Room 916, 800 Independence Avenue SW., Washington, DC.

Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

**FOR FURTHER INFORMATION CONTACT:** David L. Bennett, Office of the Chief Counsel, AGC-230, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267-3491.

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

Interested persons are invited to comment on the proposed rule by submitting such written data, views, or arguments as they may desire on any portion of the amendment. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. All communications received on or before the closing date for comments will be considered by the Administrator before taking further rulemaking action. Commenters wishing the FAA to acknowledge receipt of their comments must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25758." The postcard will be date/time stamped and returned to the commenter. Also, any portion of this rule may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments.

### Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Information Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591; or by calling (202) 267-8058. Communications must identify the amendment number of the NPRM. Persons interested in being placed on a mailing list for future notices should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

### Background

The High Density Traffic Airport Rule, 14 CFR Part 93, Subpart K, limits the number of operations during certain hours or half hours at four highly congested airports: Kennedy International, LaGuardia, O'Hare International, and Washington National. The rule establishes limitations on the number of Instrument Flight Rule (IFR) reservations ("slots") per hour that will be accepted at those airports and allocates the hourly reservations among the three classes of users: Air carriers except air taxis, scheduled air taxis (commuter airlines), and all other operators.

The hourly quotas are set at the predominant IFR capacity for each airport, as determined by the FAA. The predominant IFR capacity is the airport's capacity under the circumstances and configurations most frequently encountered when weather conditions preclude Visual Flight Rule (VFR) operation. A "slot" is defined as the authority to conduct one allocated IFR landing or takeoff operation during a specific hour or 30-minute period at one of the high density airports. The limits at Washington National Airport were revised in 1981 and those at O'Hare International Airport in 1984. The FAA continually monitors operations and delays at the four airports to determine if the current quotas are sufficient or necessary.

On December 16, 1985, the Secretary of Transportation issued a new Subpart S to Part 93 establishing comprehensive rules for the allocation and transfer of high density airport slots (50 FR 52180, December 20, 1985). Subpart S permits air carrier and commuter operator slots at the high density airports to be transferred for any consideration. Slots used for international or essential air service (EAS) operations, or which have been obtained in a lottery and have not been used for two months following the start-up of operations, may only be transferred on a one-for-one basis. Subpart S further provides for the allocation by lottery of newly available slots and slots returned to the FAA or lost under the use-or-lose provision. The use-or-lose provision requires the return to the FAA of any slot that is not used 65 percent of the time in a 2-month period.

On March 6, 1986, the FAA issued Special Federal Aviation Regulation (SFAR) 48 (51 FR 8632; March 12, 1986) which established a special procedure for a one-time withdrawal of slots used by air carriers at three of the high density airports—LaGuardia, O'Hare, and Washington National. The slots withdrawn, when added to other slots already available for allocation at each airport, totalled 5% of all air carrier slots at each airport. Slots in the 5% pool were reallocated through 2 special lotteries to new entrants and incumbent carriers with less than 8 slots at the airport in question. The two lotteries were held on March 27, 1986, and December 15, 1986. SFAR 48 terminated on January 1, 1988, and is no longer in effect.

In addition to the SFAR 48 lotteries, two other lotteries have been held under the provisions of 14 CFR Part 93, § 93.225 on December 15, 1986, and July 22, 1987. Section 93.225 provides in part that lotteries will be held when slots are available, but generally not more than twice a year. The slots in the lottery pool are those which have been returned to the FAA or have been withdrawn from carriers for failure to meet the minimum slot use requirements. No slots are withdrawn for a § 93.225 lottery. Under the existing rule, 25 percent of the slots available for a particular airport,

but not less than 2 slots, if available, are reserved for selection by new entrants.

Since the rule was first issued, a total of 140 slots have been made available to new entrants or limited incumbents (holding less than 8 slots). Of the carriers which received the 140 slots, many if not most of the carriers sold those slots in the minimum time permitted or otherwise failed to use them. Of the 140 slots allocated to new entrants and carriers with less than 8 slots in the lotteries to date, only 15 are in use by the carriers that obtained the slots. Others were used by carriers which subsequently merged into larger carriers, but most of the 140 slots were sold or were returned to the FAA without operation.

**The America West Petition**

On July 1, 1987, America West Airlines filed a petition with FAA requesting the initiation of a rulemaking proceeding concerning the allocation of takeoff and landing slots at Washington National and LaGuardia Airports. Specifically, America West requested an amendment to Part 93, Subpart S of the Federal Aviation Regulations, which would permit the FAA to withdraw slots from current holders (93 slots at National and 96 slots at LaGuardia) and redistribute the slots to air carriers with less than 18 slots at each airport. As a new entrant, America West proposed that it should receive 18 slots at each airport. The petition suggested that a total of 189 slots be withdrawn from USAir-Piedmont Airlines and Texas Air, which includes Continental and Eastern Airlines. The FAA published the petition in the **Federal Register** on July 9, 1987 (52 FR 25886).

The America West petition also commented on the proposed USAir acquisition of Piedmont Airlines, citing statistics to demonstrate that the merger would reduce competition in Washington and New York markets. The Department of Transportation (DOT) considered America West's comments prior to the approval of the merger on October 30, 1987. DOT found that the acquisition would not lessen competition substantially in Washington and New York markets as each market does not contain airport-specific submarkets. The Department held that even though USAir and Piedmont have a large share of slots at LaGuardia and National Airports, there are alternative airports in the Washington and New York metropolitan areas which are not slot-restricted and which can be utilized by air carriers. Since DOT found the New York and Washington markets to be nonairport-specific, the Department did not need to address the second issue concerning the allocation of slots at the high density airports in those markets. Rather, the decision reserved the slot allocation issue for disposition by the FAA in response to the rulemaking petition.

As justification for the requested reallocation of slots, America West contended that barriers to entry at LaGuardia and National prevented competition at these airports. Citing an informal survey, America West asserted that it has been unable to purchase any slots at either Washington National or LaGuardia Airport and that it is extremely difficult to obtain slots at these airports. The inability to obtain slots at the airports would adversely affect the travelling public, according to the petition.

*Comments on the America West Petition*

Eighteen comments were received on the America West petition. The consensus among the majority of commenters was that the petition was based on inaccurate information and that the implementation of the proposal would adversely affect the travelling public. American Airlines, Delta Air Lines, Pan American World Airways, USAir/Piedmont, United Airlines, Eastern Air Lines, and Continental Airlines all opposed the petition, stating that the buy-sell rule (Subpart S) has created an effective market for the efficient distribution of slots at the airports. All the above airlines questioned the supporting affidavit of America West, which stated that it was not possible for a small or new carrier to purchase slots at the two airports and asserted that holders are willing to sell, trade, or lease the slots. The opponents to the petition further commented that the informal survey which formed the basis of the affidavit was faulty and unrealistic. Delta asserted that the in actual practice the trading and leasing slots by the small carriers was very common.

The dissenting airlines also asserted that it would be unfair and disruptive to withdraw the slots from current slot holders. The airlines argued that should slots be withdrawn, service to some smaller communities would be eliminated. It was argued that since America West is requesting the slots in order to serve Phoenix and Las Vegas and various western cities from Washington and New York, several of the communities now served by Texas Air and USAir/Piedmont would lose air service if the slots are withdrawn, as America West is not planning to serve those other areas. This concern was also expressed by the Attorney General of West Virginia and the City and Chamber of Commerce of Dayton, Ohio. Those parties urged the FAA to deny the petition on the grounds that air service would be suspended or eliminated to their respective states.

The petition drew support from several small airports, i.e., Stewart International Airport, Wichita Airport, and the Airport Authority of Louisville and Jefferson County, as well as from Midwest Express Airlines. The airports supported the petition as a means of obtaining more air service. They asserted that the implementation of Subpart S decreased the level of business at the airports and that the only way to increase the amount of business would be to open up Washington National and LaGuardia to new carriers. Stewart International Airport also suggested that the FAA should require one out of every five scheduled flights out of LaGuardia to operate from Stewart International.

In this regard the FAA notes that slots are not identified with or linked to any particular market, and that under the Airline Deregulation Act of 1978, air carriers are not restricted in their ability to inaugurate or suspend service in a particular market. Accordingly, an assertion that a reallocation of slots would benefit any particular market is highly speculative.

Midwest Express supported the petition and agreed with America West's assertion that it was difficult to buy the slots at the two airports. Midwest Express proposed that a new SFAR–48 should be implemented to withdraw slots from larger slot holders and redistribute the slots to smaller carriers with fewer slots.

After a review of the comments, the Department has concluded that certain changes should be made to increase the ability of small or new carriers to enter the market, but that there is not enough justification for measures to withdraw slots from current slot holders. Undeniably, the most effective way to permit the entrance of new and small carriers into LaGuardia and National Airports would be to withdraw slots from existing slotholders and allocate the slots to new entrant and smaller carriers. The Department finds, however, that this procedure would be unnecessarily disruptive to existing air service and is not warranted by the circumstances described by the petitioner. Therefore, the Department believes that amendments to the procedures in Subpart S that would tend to make marginally used slots available for sale or reallocation would represent a sufficient balance of the interests of

incumbent carriers and any smaller carriers that are actually in a position to benefit from new slots. Initiation of this rulemaking represents the agency response to the America West petition, and no further separate action on that petition will be taken.

**Public Law 100–457**

The Department of Transportation Appropriations Act, Pub. L. 100–457, enacted September 30, 1988, contains a requirement that FAA institute rulemaking to consider certain changes in the slot allocation and transfer regulations. Section 149 of Pub. L. 100–457 reads as follows:

> Not later than 90 days after the date of enactment of this Act, the Administrator of the Federal Aviation Administration shall institute a rulemaking proceeding to consider the need for changes to the existing regulation concerning the allocation and transfer of "slots" held by air carriers and commuter operators at each of the four airports covered by the final rule regarding Slot Allocation and Transfer Methods at High Density Traffic, Airports, published in the Federal Register on December 20, 1985. Included among the issues that shall be considered in this proceeding are (1) the overall effect of the existing buy-sell regulation upon new entry or limited incumbents at these four airports, (2) the effects of the recently approved mergers and acquisitions upon the operation of the buy/sell program at these airports, (3) the competitive and fare implications of the utilization of slots for providing services to and from hub airports and on monopoly routes, (4) the effect of short-term leases of slots upon the ability of new entrants or limited incumbents to purchase slots at these airports, (5) the effect of the use of air carrier slots by commuter operators upon entry by air carriers at these airports, and (6) the variation in prices paid for slots since adoption of the buy/sell program. The Administrator shall take final action in this proceeding, including the promulgation of any resulting final regulations, not later than 270 days after the date of enactment of this Act.

While the Department has developed a body of data and analyses on some of the issues raised in Pub. L. 100–457, we believe that additional information on these issues would be useful in order to determine whether regulatory measures are necessary. Accordingly, the FAA has not, at this time, proposed measures other than those specifically described below. The FAA requests comments and information on each of the following issues, and the agency may base further rulemaking on the comments received.

*(1) The Overall Effect of the Existing Buy-Sell Regulation Upon New Entry or Limited Incumbents at These Four Airports*

Although new carriers have entered markets and other carriers have expanded their operations at the high density airports, the opinion has been expressed that the administration of slots under existing regulations discourages, and sometimes precludes, new entry and expansion by limited incumbents. Comments should distinguish the effects of economic conditions and general policies, such as airline deregulation, from the actual impact of the current slot allocation and transfer regulations.

*(2) The Effects of the Recently Approved Mergers and Acquisitions Upon the Operation of the Buy-Sell Program at These Airports*

While the Department looked carefully at the competitive impact of the slots holdings in the relevant merger cases and in one case (the acquisition of Eastern by Texas Air Corporation) required the sale of a number of slots, additional information is requested on the realized impact of the mergers in concert with the operation of the buy-sell rule.

*(3) The Competitive and Fare Implications of the Utilization of Slots for Providing Services to and From Hub Airports and on Monopoly Routes*

A comment on this issue should include the particular scheduling information or actual fare data which the commenter believes would support its position.

*(4) The Effect of Short-term Leases of Slots Upon the Ability of New Entrants or Limited Incumbents to Purchase Slots at These Airports*

The existing rule permits carriers to transfer slots on a temporary basis. As a result, carriers may retain the allocation of a slot while permitting another carrier to operate it for a specified period. In practice, such "leases" have been for periods of one day to several years, and have enabled carriers to work out among themselves short-term scheduling adjustments through a market mechanism.

*(5) The Effect of the Use of Air Carrier Slots by Commuter Operators Upon Entry by Air Carriers at These Airports*

Currently, air carrier slots may be operated with commuter aircraft. This permits an air carrier to hold slots for which it has no present need, by leasing them to a commuter operator or using them for a commuter affiliate. Comments are requested on whether the FAA should require that commuter operators not be permitted to use air carrier slots. Comments are specifically requested on: (i) The effect of the existing rule on the ability of air carriers to retain unused slots by leasing the slots to commuter operators; (ii) the prevalence of this practice; (iii) whether the elimination of the provision would substantially affect the holding of unused slots; (iv) the effect of the existing rule on competition; and (v) whether there are benefits to the existing provision unrelated to the retention of unused air carrier slots.

*(6) The Variation in Prices Paid for Slots Since Adoption of the Buy-sell Program*

The current regulations permit the transfer of a slot for any consideration. The regulations do not require the reporting of the price paid for permanent or temporary transfer of a slot, and neither OST nor FAA collect or maintain such information. The intent of the rule was to permit the free transfer of slots, in accordance with airline scheduling needs, using a free market mechanism without administrative intervention. Commenters who urge that slot price information should be collected and utilized by the agency in some manner should provide information on the value and/or actual exchange price of slots, and the rationale for such collection, in support of the comment.

Finally, the FAA requests comments on the underlying mechanism by which demand for air traffic services is controlled—specifically, the imposition of limits on the number of operations each hour or half hour during certain periods of the day. Comments are requested on whether the current restrictions of the High Density Rule are necessary in consideration of technical innovations and improvements in air traffic services since the rule was adopted in 1969. Comments should address the potential effects on operating delays and efficiency of the air traffic system which would result from removal or amendment of High Density Rule restrictions at each of the 4 airports. Any suggested alternatives to current High Density Rule restrictions should be identified.

**The Proposal**

In consideration of the America West petition, comments submitted, and the status of current slot holdings, the Department is considering an amendment to Subpart S of Part 93 of the Federal Aviation Regulations (14 CFR Part 93, Subpart S) to alter certain restrictions concerning transfer of slots at the high density airports.

In summary, the proposed amendment would:

—Provide that slots will not be withdrawn from a carrier with 8 or fewer slots, except for failure to use the slots, if the carrier itself uses the slots held.

—Increase the slot use requirements for carriers holding a substantial number of slots in certain hours or half-hours, to minimize holding of unused slots.

The use restrictions proposed would not affect the normal operating use of slots, but would tend to reduce the incidence of unused slots.

First, the notice proposes to add a use requirement to the provision protecting the slots of carriers holding 8 or fewer slots at an airport. FAR § 93.223(f) currently provides that slots will not be withdrawn from an air carrier or commuter operator holding 8 or fewer slots at an airport (not counting international slots). The proposed amendment would add a provision that the exception from withdrawal only applies to slots used by the holding carrier, and would clarify that the protection does not apply to withdrawal for nonuse under § 93.227(a). The use requirement would prohibit the current practice by larger carriers of transferring vulnerable slots (i.e., slots with a low withdrawal priority number) to a carrier with fewer than 8 slots, then leasing the slot back for operation.

Second, it is proposed to increase the minimum percentage of use for slots under § 93.227(a) for carriers holding a substantial number of slots in one time period. For a time period (hour or half-hour, depending on the airport) in which a carrier holds 10 or more slots, the FAA will withdraw a slot used less than 90 percent of the time in a 2-month period. For a time period in which a carrier holds 5 through 9 slots, the FAA will withdraw a slot used less than 80 percent of the time in a 2-month period. In all other cases, the minimum percentage of 65 percent under the existing rule is retained. The proposed amendment would substantially reduce the ability of a carrier to protect unused slots by distributing a given number of operations across a greater number of slots. The amendment would not affect smaller carriers or interfere with the normal operating flexibility required for use of slots, however.

The amendments proposed are intended to provide an opportunity for new entrant carriers to have access to high density airports, and for small incumbent carriers to increase the number of operations at those airports, without withdrawing from incumbent carriers slots used for existing operations. The agency requests comments on the specific impacts of the rule proposed on both new entrant and incumbent operators.

Because the proposed amendment is essentially procedural in nature and does not significantly alter the current operational environment for either air carrier or commuter operations at the high density airports, the FAA has determined that this proposed amendment: (1) Is not a "major rule" under Executive Order 12291; and (2) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Because of congressional interest in this subject, the rulemaking is considered a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because of the minimal impact on any operator, I certify that under the criteria of the Regulatory Flexibility Act, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

### Paperwork Reduction Act

This amendment provides for no changes to the required reporting of information by air carrier and commuter operators to the FAA. Under the requirements of the Federal Paperwork Reduction Act, the Office of Management and Budget previously has approved the information collection provision of Subpart S. OMB Approval Number 2120–0524 has been assigned to Subpart S.

### Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### List of Subjects in 14 CFR Part 93

Aviation safety, Air traffic control.

### The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 93 of the Federal Aviation Regulations (14 CFR Part 93) as follows:

## PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for Part 93 continues to read as follows:

**Authority:** 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106 (Revised Pub. L. 97–449, January 12, 1983).

2. In § 93.223, paragraph (c)(3) added to read as follows:

**§ 93.223 Slot withdrawal.**

(c) * * * * *

(3) Except as provided in paragraph § 93.227(a), the FAA shall not withdraw any slot held and operated by an air carrier or communter operator at an airport if that air carrier or commuter operator holds eight or fewer slots at that airport (excluding slots used for operations described in § 93.217(a)(1)).

* * * * *

3. In § 93.227, paragraph (a) is revised to read as follows:

**§ 93.227 Slot use and loss.**

(a) Except as provided in paragraphs (b), (c), (d), and (g) of this section, a slot shall be recalled by the FAA if it is not used for the following percentage of the time over a 2-month period:

(1) In a time period in which the slot holder holds 10 or more slots: 90 percent.

(2) In a time period in which the holder holds 5 through 9 slots: 80 percent.

(3) In all other cases: 65 percent.

* * * * *

Issued in Washington, DC, on December 16, 1988.

**Mimi W. Dawson,**

*Deputy Secretary.*

FR Doc. 88–29309 Filed 12–19–88; 12:02 pm]

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federal register

Thursday
December 22, 1988

Part III

# Department of Education

**National Institute on Disability and Research; Final Funding Priorities for Rehabilitation Research and Training Centers and Applications for New Awards, Fiscal Year 1989; Notice**

## DEPARTMENT OF EDUCATION

### National Institute on Disability and Rehabilitation Research

**AGENCY:** Department of Education.

**ACTION:** Notice of final funding priorities for Rehabilitation Research and Training Centers for Fiscal Year 1989.

**SUMMARY:** The Secretary of Education announces final funding priorities for some of the research activities to be supported under the Rehabilitation Research and Training Center (RRTC) program of the National Institute on Disability and Rehabilitation Research (NIDRR) in fiscal year 1989. A separate notice inviting applications is also published in this issue of the Federal Register.

**FOR FURTHER INFORMATION CONTACT:** Betty Jo Berland, National Institute on Disability and Rehabilitation Research (Telephone: (202) 732–1139). Deaf and hearing-impaired individuals may call (202) 732–1198 for TDD services.

**EFFECTIVE DATE:** These priorities take effect either 45 days after publication in the Federal Register or later if Congress takes certain adjournments. If you want to know the effective date of these priorities, call or write the Department of Education contact person.

**SUPPLEMENTARY INFORMATION:** On August 23, 1988, proposed priorities for Rehabilitation Research and Training Centers (RRTCs) were published in the Federal Register at 53 FR 32188. NIDRR received public comments and made some modifications to the priorities on the basis of those comments. An analysis of the comments and responses is included in this notice.

On the basis of the comments received from the public, several changes were made in the priorities. The priority for an RRTC in rehabilitation of persons with long-term mental illness has been modified to note that the dissemination activity may include materials beyond those resulting from the Center's research, and to note the importance of independent living as a goal of transition programs for young adults. The priority for the RRTCs on seriously emotionally disturbed children has been modified to emphasize that consideration must be given to infants and toddlers. On the basis of recommendations included in the comments from the public, NIDRR has included two additional requirements in this priority: epidemiological studies to define the target population, and the development of a methodology to be used by States in assessing the needs for various service system components. The priority on less restrictive housing has been renamed the Center on Accessible Housing and has been modified to delete the emphasis on aging persons and focus equally on disabled persons of all ages, to specify the inclusion of children and their families, and to broaden the composition of the training target group.

#### Analysis of Comments and Changes

NIDRR received many letters commenting on the proposed priorities. A summary and discussion of those comments follow, along with an analysis of the changes that were made.

*RRTC on Rehabilitation of Individuals with Long-term Mental Illness Comment:* Several commenters suggested that the Center dissemination activity should include the diffusion of relevant information from sources other than the Center's own research projects.

*Discussion:* The principal requirement for a Center's dissemination effort must be diffusing the findings of its research to appropriate target groups and promoting the utilization of those research findings. However, a Center may also disseminate appropriate materials that originated elsewhere, if they are pertinent to the Center's own mission. There was no intent to preclude applicants from proposing a broader dissemination activity.

*Changes:* The dissemination activity has been expanded to indicate that the Center may disseminate relevant materials from other sources.

*Comment:* One commenter stated that the Center should work to develop models for family involvement in service delivery program planning and other activities.

*Discussion:* NIDRR is aware of the need to further study and develop models for family roles and support to families during the rehabilitation of individuals with long-term mental illness. However, NIDRR is interested in focusing each of its Centers on a limited segment of a problem area, and to prescribe fewer requirements for the Centers in the absolute priorities. While NIDRR is requiring that this Center study and develop strategies to enhance consumer roles in their own rehabilitation, the Institute will not require that the Center also focus on family research. Rather, NIDRR intends to call for research on family involvement in the rehabilitation of individuals with long-term mental illness in future priorities.

*Changes:* None.

*Comment:* One commenter recommended that NIDRR add a focus on individuals with a "dual diagnosis" of severe mental illness and substance abuse disorder.

*Discussion:* While NIDRR recognizes the seriousness of the problems confronted by this target population, the Institute has based the content of this priority on the recommendations of a three-day planning conference involving leaders in the field of mental illness rehabilitation, and believes that the scope outlined in the proposed priority is sufficient for one Center. To add issues of dual diagnosis would dilute the efforts of the Center in the priority areas already identified.

*Changes:* None.

*Comment:* One commenter suggested that the Center should also be required to focus on homeless mentally ill persons.

*Discussion:* NIDRR has included an emphasis on homeless mentally ill persons in past Center priorities. Since the National Institute of Mental Health (NIMH), which is cofunding this Center, now has a separate funding authority that focuses on the needs of homeless mentally ill persons, the two agencies have decided not to require this Center to address this specialized population. An applicant is not precluded from proposing activities to address the needs of homeless mentally ill persons, as long as the applicant meets all of the required activities in the priority.

*Changes:* None.

*Comment:* A few commenters suggested that the Center should be required to develop and test supported employment models as one rehabilitative intervention.

*Discussion:* NIDRR has recently funded several projects on the assessment of supported employment programs for persons with long-term mental illness. In addition, the Office of Special Education and Rehabilitative Services as a whole has undertaken an array of supported employment activities. Before requiring a Center to undertake a long-term commitment to further research in this area, NIDRR would prefer to have the findings of some of these activities to use as a guide in the development of future priority requirements. Furthermore, NIDRR prefers, wherever possible, not to specify the types of rehabilitative interventions a Center must examine, but to allow the applicant and the resultant Center to propose interventions based on prior research, needs assessments, and modeling. Applicants are not precluded from proposing assessments of supported employment models, but they must demonstrate the value of their approach.

*Changes:* None.

*Comment:* One commenter objected to the studies of systems change in this priority, stating that this goal could be addressed by existing RRTCs on mental health or through the systems change now in progress in the supported employment program.

*Discussion:* One of the existing RRTCs in mental health will complete its funding period in fiscal year 1988; the remaining Center will complete its funding period in fiscal year 1989. NIDRR has no opportunity to redirect the activities of those Center grantees to this new priority area. One purpose of announcing this priority is to maintain NIDRR's commitment to and activity in mental health research. Further, any Center funded in response to this priority will be expected to address service systems in mental health, generic health services, and housing, as well as rehabilitation and employment, and the scope and purpose will be broader than those in the systems change activity related to supported employment.

*Changes:* None.

*Comment:* One commenter recommended that a requirement to identify and assess existing models of psychosocial rehabilitation services should be required in the priority for research on the rehabilitation of persons with long-term mental illness.

*Discussion:* This type of activity has been supported by NIDRR in previous RRTCs over a ten-year period. NIDRR believes that virtually all of the elements in the current priority are components of psychosocial rehabilitation programs. However, NIDRR believes that after nearly fifteen total years of RRTC activity in mental health rehabilitation, it will be more productive now for a Center to undertake definitive research in limited problem areas. The foci of this Center are case management, consumer self-direction, transition, and postsecondary education.

*Changes:* None.

*Comment:* One commenter suggested that the emphasis on transition to work or postsecondary education neglects the more important issue of transition to independent living in the community.

*Discussion:* The Secretary agrees that this is an important point and has therefore modified the priority.

*Changes:* The priority element relating to youth in transition now includes transition to "living independently in the community."

*Comment:* One commenter recommended that all priorities should specifically include leisure activities.

*Discussion:* Such terms as "rehabilitation", "community-based programs", "patterns of successful family coping", "independent living in the community," and "community service systems" can include leisure activities and recreation. NIDRR prefers to let the rehabilitation research field, through the applications and the evaluations of the peer reviewers, define the elements of rehabilitation that should be addressed.

*Changes:* None.

*RRTCs on Rehabilitation of Seriously Emotionally Disturbed (SED) Children and Youth*

*Comment:* One commenter recommended that the unique needs of infants and toddlers should be given consideration under both priorities relating to seriously emotionally disturbed children and youth.

*Discussion:* NIDRR agrees that early diagnosis and intervention are important for this group.

*Changes:* In the introduction to this priority, NIDRR has specified that each Center must consider the needs of infants and toddlers with serious emotional disturbance.

*Comment:* One commenter suggested that it would be important for the Center on improving service systems to work toward developing a consensus about criteria for residential treatment.

*Discussion:* NIDRR generally prefers to let applicants decide the methods they will use to approach the prescribed goals, which in this case is an assessment of the efficacy and cost-effectiveness of alternatives to residential treatment. Applicants are not precluded from proposing consensus-building as an initial approach.

*Changes:* None.

*Comment:* Several commenters recommended that there be an emphasis on epidemiologic and longitudinal studies in the Centers on SED children.

*Discussion:* The need for more epidemiological research to define certain parameters of the population is clear, and the priority has been modified to include this activity. The objective specified for the Center could be approached through a longitudinal data collection effort. Applicants may propose a longitudinal study.

*Changes:* The priority has been modified to include a statement that epidemiological research to determine certain characteristics is part of the scope of this Center.

*Comment:* Several commenters suggested that the priority be revised to make it clear that the study of the state-of-the-art could be done through the mechanism of a conference, since the commenters believed that a conference might be a preferable or more cost-effective approach.

*Discussion:* NIDRR intends that an applicant may propose to conduct a study of the state-of-the-art through the mechanism of a conference if the applicant demonstrates that this is the most appropriate means to conduct the study.

*Changes:* A change has been made to note that a Center in response to this priority may conduct either a conference or study on the state-of-the-art.

*Comment:* One commenter asked for clarification as to whether grantees would be expected to implement model programs to assist in the transition from school to work.

*Discussion:* An applicant may address the requirement to "develop, evaluate, and disseminate model programs" in various ways. A model demonstration program would be one such approach, and most RRTCs conduct at least one such program. Many RRTCs have cooperative agreements with service providers or with operational units within a university (e.g., model schools). Under these agreements, the latter typically conduct the model programs, while the RRTC conducts evaluation and perhaps provides technical assistance. Applicants may propose this approach or other appropriate approaches.

*Changes:* None.

*Comment:* Several commenters noted that State agencies are not equipped to assess the needs for various components of a comprehensive service system and recommended that the Center address that problem.

*Discussion:* NIDRR believes that needs assessment is an important element in the creation of responsive, comprehensive service systems at the State level. This issue is particularly critical to the Children and Adolescent Service Systems Program (CASSP) of NIMH, the cosponsor of the Center. A model to assist States to conduct such needs assessments would be an important contribution of the Center.

*Changes:* The priority has been modified to include the development of a methodology whereby States can assess the needs for various system components.

*Comment:* A few commenters urged that the development of instruments and classification systems should address a broader range of characteristics and abilities than those specified in the priority.

*Discussion:* As stated before, the elements listed in the priority are not meant to be limiting or all-inclusive. Applicants may propose the

development of instruments pertinent to any dimensions they deem important, as long as they meet the minimum requirements imposed by the priority.

*Changes:* None.

*Comment:* One commenter objected to the priorities for additional Centers related to seriously emotionally disturbed children and youth on the basis that these are not compatible with the mandates of the Federal-State rehabilitation program, and that they dilute resources that should be directed to the problems of the population served by the vocational rehabilitation system.

*Discussion:* NIDRR currently contributes to the funding, along with the National Institute of Mental Health, of two RRTCs studying problems related to seriously emotionally disturbed children and youth. These Centers will complete their funding periods in fiscal year 1988. Thus, the proposed Centers are not additional Centers, but are a means to continue NIDRR's support of work in the important area of mental illness rehabilitation. The legislative mandate of NIDRR is different from that of the Rehabilitation Services Administration. NIDRR is required to address the problems of disabled individuals of all ages, and there is specific reference in the authorizing legislation to both children and elderly persons.

*Changes:* None.

*RRTC on Accessible Housing*

*Comment:* A few commenters suggested that the title "Less Restrictive Housing Environments" was potentially confusing and could lead to a diversion of the focus away from accessible housing. They recommended that a more precise name be found for the Center.

*Discussion:* In order to eliminate the possibility, however remote, of confusion about the mission of the Center, the Secretary has changed the title of the priority.

*Changes:* The title of the priority has been changed to "Accessible Housing Environments for Individuals with Disabilities".

*Comment:* Several commenters stated that the priority as proposed placed too great an emphasis on aging, which is only one cause of disabling conditions leading to the need for adapted environments. They recommended that the Center focus on the housing needs of persons of all ages with disabilities.

*Discussion:* Because of the concern that focusing on the elderly will lead to the neglect of the needs of individuals with severe disabilities resulting from causes other than age, the Secretary has modified the priority. The focus on aging was originally inserted in the priority because NIDRR believes that prudent and cost-effective planning requires that the needs of persons who will require housing adaptations as they age be taken into account in developing accessible housing options for all persons with disabilities. It may be cost-effective to expand the parameters of the target population for adapted housing and furnishings, since a larger volume both lowers the unit cost and provides an expanded market for housing rental turnovers. Also, NIDRR believes that service providers and researchers may benefit from a knowledge of current practices to adapt housing and equipment to the needs of the elderly population. Thus, while the Secretary is changing the focus of the priority to provide equal emphasis on all age groups among persons with disabilities, the Secretary urges that Center applicants not neglect these additional sources of information and support.

*Changes:* The special emphases upon aging persons has been deleted from the priority. A statement that persons of all ages, including disabled children and their families and elderly persons with disabilities, must be considered in the activities of the Center, has been added.

*Comment:* Many commenters urged that the Center include children with disabilities and their families among its target groups, and some urged a special emphasis on this group.

*Discussion:* The Secretary agrees that this population is an important group and that its needs must be addressed by the Center. However, NIDRR will not target any one group. The priority has been amended to clarify that the Center must address the housing needs of all age groups, without special emphasis.

*Changes:* A statement that the Center must address the housing requirements of all age groups, including disabled children and their families and elderly persons with disabilities, has been added to the priority.

*Comment:* Several commenters stated that there has been sufficient research on accessible housing, and that the present need is for dissemination of what is known into practice.

*Discussion:* The Secretary agrees that dissemination and promoting utilization of what is known are needed and are important functions of this Center. However, there are many areas in which our knowledge of feasible, cost-effective solutions to housing problems of disabled persons is inadequate. A major purpose of any RRTC is to conduct a significant program of research to advance the state of knowledge in a given area. The Secretary notes that there may be other mechanisms that can be used for a pure dissemination activity. It would not be appropriate for an RRTC to be limited to dissemination.

*Changes:* No change has been made. There is considerable emphasis on dissemination in the priority as proposed.

*Comment:* One commenter questioned the need for the RRTC to be affiliated with a university. The commenter expressed concern that this affiliation might create an overly academic emphasis within the Center and neglect practical experience.

*Discussion:* The legislation creating the RRTC program requires that RRTCs be affiliated with an institution of higher education.

*Changes:* None.

*Comment:* Several commenters recommended that the target population for training should be expanded to include families of disabled children, educators, and others.

*Discussion:* The specified target population has been expanded. However, it is important to note that this is not a restrictive listing, and that an applicant may include other appropriate groups in its training programs. Since the target groups specified in the proposed priority include many that are not generally included in rehabilitation-related activities, NIDRR believes it is important to require their inclusion.

*Changes:* The training target population has been modified to include families of persons with disabilities, educators, rehabilitation service providers, and other appropriate audiences.

*Comment:* One commenter asked whether the RRTC was expected to become involved in developing and influencing public policy.

*Discussion:* As a grantee of the Department of Education, an RRTC may not use Department funds for the purpose of influencing public policy through lobbying or related forms of advocacy. It is assumed that the Center's findings and recommendations, because of their merits, may be of use to policymakers.

*Changes:* None.

*Comment:* A few commenters recommended other activities for the Center, such as serving as a national information resource, providing specific solutions to individuals, or providing implementation assistance to practitioners.

*Discussion:* In general, applicants are not restricted to the activities specified in the priority. While they must address all of the priority activities, they may include other activities as well. The Secretary will not require any additional activities because the requirements for

this Center are already extensive. Applicants are also reminded that they should consider how this Center will relate to planned and existing technology information resources, such as the Rehabilitation Engineering Centers in technology transfer and statewide services, ABLEDATA, and the possible State and national information resources authorized in the new Technology-Related Assistance for Persons with Disabilities Act of 1988.

*Changes:* None.

**Background**

A program of Rehabilitation Research and Training Centers has been established to conduct coordinated and advanced programs of rehabilitation research and to provide training to rehabilitation personnel engaged in research or the provision of services. RRTCs must be operated in collaboration with institutions of higher education and must be associated with rehabilitation service programs. Each Center conducts a synergistic program of research, evaluation, and training activities focused on a particular rehabilitation problem area. Each Center is encouraged to develop practical applications for all of its research findings. Centers generally disseminate and encourage the utilitzation of new rehabilitation knowledge through such means as writing and publishing undergraduate and graduate texts and curricula and publishing findings in professional journals. All materials that the Centers develop for dissemination and training must be accessible to individuals with a range of disabling conditions. RRTCs also conduct programs of in-service training for rehabilitation practitioners, education at the pre-doctoral and post-doctoral levels, and continuing education. Each RRTC must conduct an interdisciplinary program of training in rehabilitation research, including training in research methodology and applied research experience, that will contribute to the number of qualified researchers working in the area of rehabilitation research. Centers also must conduct a state-of-the-art studies in relevant aspects of their priority areas. In addition, each RRTC must provide training to individuals with disabilities and their families in managing and coping with disabilities.

The following four final funding priorities represent areas in which NIDRR has a long-standing interest. The publication of these priorities does not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise directed by statute. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. Continued funding of a Center depends at all times on satisfactory performance and accomplishment, in accordance with the provisions of 34 CFR 75.253(a).

**Priorities (4) Rehabilitation for Persons with Long-Term Mental Illness**

There are over two million persons with long-term, severe mental illness. Improved rehabilitation interventions and service delivery models are needed to afford better opportunities for this population to remain out of institutions and to attain satisfactory lives in their communities. While the population of adults with severe psychiatric disabilities spans all ages, there is particular concern with young adults whose education and vocational preparations have been interrupted by severe mental illness. Service systems have not addressed adequately the transition from school to work or independent living for young adults.

The configuration of Federal financial supports, third-party payors, and State and local policies has led many service systems toward a case management approach that links clients with needed services and provides continuity of care. However, there is a range of approaches to case management, with no reliable information about which components are most important or most effective in various situations.

There has been a significant emphasis on consumer involvement in rehabilitation programs for persons with severe psychiatric disabilities, including peer self-help groups and consumer-managed programs. However, little is known about the most effective approaches to organizing and managing these programs and to developing consumer capacity to operate successful programs.

Results of research and practice indicate that specialized rehabilitative interventions can increase the likelihood of community adjustment for persons with long-term mental illness. It is important to continue to develop and test more effective rehabilitative interventions, including especially those that contribute to improvements in education, vocational status, and general health care.

NIDRR, with the cooperation of the National Institute of Mental Health, intends to fund an RRTC to address these issues. Any Center to be funded under this priority must involve persons with long-term mental illness and their family members in the planning, conduct and evaluation of the research and training activities.

An absolute priority is announced for an RRTC to:

- Identify and assess existing case management systems for persons with long-term mental illness, including goals, organization, staffing, functions, and outcomes, and develop and test model approaches to case management;
- Develop and evaluate model approaches to train consumers to administer programs, represent their interests in program development, and address issues of systems change;
- Evaluate the impact of client involvement in program planning and implementation on program content, participation and use, and outcomes;
- Study the experiences and problems confronting young adults, aged 18–22 years, who are completing their special education programs under Pub. L. 94–142, and develop model service interventions for this group, including services to facilitate their transition from school to work or postsecondary education, and living independently in the community;
- Develop and test models to use existing community resources to meet client needs for postsecondary education;
- Develop and evaluate rehabilitative interventions to enhance the rehabilitation of individuals with long-term mental illness;
- Develop and test models for the efficient delivery of technical assistance to consumer self-help and other community-based programs for persons with mental illness; and
- Develop and implement a program to disseminate the findings of the Center's research and, as appropriate, other relevant new knowledge to appropriate practitioner, consumer, and research constituencies.

**Rehabilitation of Severely Emotionally Disturbed (SED) Children and Youth (Two Priorities)**

There are an estimated three million children with emotional disturbances, and they are among the most underserved of all disabled populations. (*Unclaimed Children,* Children's Defense Fund, 1982.) A background paper issued by the Office of Technology Assessment (OTA) indicates that, while there is convincing evidence that severely emotionally disturbed children can benefit from mental health services, there is a need for more reliable early assessment, better matching of children with services and interventions, and more community-based services. (*Children's*

*Mental Health*, 1986.) That report further notes that the Federal Government is virtually the only source of funds for research and training in this area.

Children with emotional disturbances often do not receive any attention to their problems until they require services from other system components—juvenile justice, corrections, social services, or drug abuse agencies, for example. The most readily available form of help for these children continues to be in-patient hospitalization—the most restrictive and costly form of intervention.

NIDRR has identified two different programmatic areas of research, training, and knowledge dissemination and is proposing two RRTCs in this area, each focusing on one of the sets of specific elements outlined below. The target population includes children from birth to age 21 years who have serious emotional impairments, and each Center must give consideration to the needs of children from birth to five years of age. The target population of families must include single-parent families, families with teen-aged parents, and minority families.

Any Center to be funded in this area must involve severely emotionally disturbed youth and members of their families in planning, conducting, and evaluating the research program. Each Center must conduct all research and training activities in community-based settings, and must establish communications with RRTCs in related areas, with the Child and Adolescent Service System Program (CASSP) directors, the National Parent Network, and other relevant organizations concerned with the improvement of children's mental health. Each Center may elect to establish satellite activities through agreements with other institutions of higher education for the purpose of replicating research studies or providing additional training sites. The National Institute of Mental Health (NIMH) intends to contribute support to these Centers. Specific priority requirements are:

**Improving Service Systems for Seriously Emotionally Disturbed Children and Youth**

An absolute priority is announced for an RRTC to:

- Develop instruments and classification systems that will provide profiles of the functional abilities and deficits of children with serious emotional disorders;
- Develop a methodology that can be used by States to determine the level of need for various components of a comprehensive service system for this target population;
- Conduct epidemiological research to define the population of SED children and youth in terms of numbers, ages, characteristics, functional levels, and interactions with the service system;
- Develop, evaluate, and disseminate model programs, involving interagency and interdisciplinary collaboration, to assist transition from school to work for this population;
- Assess the efficacy and cost-effectiveness of alternatives to residential treatment, identify incentives and disincentives to community and home-based treatment, and develop models to address the disincentives;
- Assess the financing options that could be applied to meet the multiple service needs of this population and their families;
- Provide information to the RRTC on Improving Services for Families of Children and Youth With SED for inclusion in a clearinghouse; and
- Conduct at least one study or conference on the state-of-the-art in a selected topic in this research area.

**Improving Services for Families of Children and Youth with Serious Emotional Disturbances (SED)**

An absolute priority is announced for an RRTC to:

- Investigate patterns of family use of community-based resources and services;
- Investigate patterns of successful family coping among families with SED children;
- Analyze the perceptions of SED among minority families and the impact of those perceptions on service utilization, and develop and evaluate culturally sensitive information and service delivery models for minority families;
- Develop and test strategies to facilitate the involvement of families in the development and evaluation of community-based services at the individual, community, and State levels;
- Identify exemplary graduate level training courses and curricula used in the cross-disciplinary training of professionals and families who plan, provide, and coordinate services and programs for this population of children and youth, and develop materials to replicate best practices;
- Develop a national clearinghouse, including a parent-operated resource center component, that can provide technical assistance to parents, family members, and professionals on service systems and on options for family support; and
- Conduct at least one national conference on the state-of-the-art in supportive resources for families with children with serious emotional disturbances.

**Accessible Housing Environments for individuals with Disabilities**

The provision of appropriate housing for the lifespan of disabled persons is a major undertaking, involving accommodation to a complex array of physical limitations. An RRTC is needed in this area to develop a variety of housing options and innovative approaches to challenges of designing, financing, and administering models of adaptive housing. A convergence of knowledge from the fields of architecture, engineering, construction, rehabilitation, independent living, and related areas is required to create appropriate housing environments in which disabled persons can live independently or with families and other household members. The knowledge base must include information about modifications to existing structures and equipment, as well as design concepts that can be used to build facilities for the entire lifespan. The knowledge base must be developed from the results of research, needs assessments, and analysis of the physical capabilities of individuals with disabilities.

One immediate objective is to conduct new programmatic research into the needs of disabled persons for accessible housing environments. A second focus is to improve the utilization of available research-based information on accessibility and independent living, including data on human performance, models of accessible building adaptations, and standards and guidelines that have been developed for construction. Over the longer term, it is important to develop better building designs, based on field and laboratory research, and tested in regular use by disabled persons.

A prerequisite to improving design of housing environments in a permanent and comprehensive way is to make those who design, build, adapt, maintain, manage, finance, and use housing aware of the potential for creating more accessible environments for independent living. A center to be funded in response to this priority must maintain liaison with the Architectural and Transportation Barriers Compliance Board (ATBCB), as well as with NIDRR-supported research projects and Centers in such areas as independent living, aging, families, and community integration. The RRTC must maintain liaison with the Rehabilitation

Engineering Centers, especially those in the area of quantification of human performance. A critical element of any Center to be funded under this priority will be the involvement of individuals with disabilities and their families in the planning, conduct, and review of the research and related activities.

An absolute priority is announced for an RRTC to:

- Identify and assess housing environments that promote independent living for persons with disabilities and the specific housing environment needs of persons with physical, sensory, and cognitive impairments, including disabled children and their families, elderly persons, and adults of all ages;
- Analyze the legal, regulatory, commercial, social, psychological, business, design, and financial aspects of developing suitable living environments for disabled persons of all ages and develop strategies to address problems in these areas;
- Develop and disseminate recommendations for new designs and for adaptations to existing housing that are appropriate for persons with physical, sensory and cognitive impairments;
- Incorporate new research knowledge from NIDRR-funded projects and other sources in products, housing design and information and training materials to enhance accessibility and independent living;
- Develop, acquire, maintain, and disseminate both graphic and text databases on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, and serve as a national information resource;
- Design training materials to increase awareness of the housing needs of disabled persons, concepts of accessibility, and techniques to increase the availability of accessible housing, and conduct training for a range of involved populations, including persons with disabilities and their families, architects and home builders, rehabilitation service providers, educators, designers and manufacturers of furnishings and equipment, housing managers, city planners and engineers, and other appropriate audiences;
- Promote concepts of accessible housing, including ideas from abroad, in graduate and undergraduate education and professional practice in a wide range of academic disciplines and applied professions; and
- Conduct at least one study of the state-of-the-art in a significant aspect of accessible housing.

(Catalog of Federal Domestic Assistance 84.133B, National Institute on Disability and Rehabilitation Research)

**Authority:** 29 U.S.C. 760–762.

Dated: December 8, 1988.

**Lauro F. Cavazos,**

*Secretary of Education.*

[FR Doc. 88–29270 Filed 12–21–88; 8:45 am]

BILLING CODE 4000-01-M

## DEPARTMENT OF EDUCATION

**[CFDA No. 84.133B]**

### Notice Inviting Applications for New Awards for Rehabilitation Research and Training Centers Under the National Institute on Disability and Rehabilitation Research for Fiscal Year 1989

*Note to Applicants:* This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

*Purpose of Program:* This program provides funds to institutions of higher education, and organizations affiliated with such institutions, to support comprehensive, interdisciplinary programs of research and training to address problems confronting individuals with disabilities.

*Deadline for Transmittal of Applications:* February 21, 1989.

*Available Funds:* $2,450,000.

*Estimated Number of Awards:* 4.

**Note:** The Department of Education is not bound by any estimates in this notice.

*Estimated Range of Awards:* $500,000–$750,000.

ESTIMATED AWARDS FOR RRTCS FOR FY 1989 CFDA No. 84.133B

| Priority area | Estimated size of award | Estimated No. of awards | Project period |
|---|---|---|---|
| Rehabilitation for persons with long-term mental illness. | $750,000 per year. | 1 | 60 mo. |
| Improving service systems for seriously emotionally disturbed children and youth. | $600,000 per year. | 1 | Do. |
| Improving services for families of children and youth with serious emotional disturbances. | $600,000 per year. | 1 | Do. |
| Accessible housing environments for individuals with disabilities. | $500,000 per year.. | 1 | Do. |

*Applicable Regulations:* (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, and 80, and (b) the regulations governing this program published at 34 CFR Part 352.

*Priorities:* The Secretary gives an absolute preference to applications that meet the following priorities: Rehabilitation for Persons with Long-Term Mental Illness; Improving Service Systems for Seriously Emotionally Disturbed Children and Youth; Improving Services for Families of Children and Youth with Serious Emotional Disturbances; and Accessible Housing Environments for Individuals with Disabilities. The complete description of these priorities is published elsewhere in this issue of the **Federal Register** in a notice of final funding priorities.

Under 34 CFR 75.105(c)(3) the Secretary funds under this competition only applications that meet these absolute priorities.

*Selection Criteria:* The Secretary uses the following criteria under 34 CFR Part 352 to evaluate an application under this program.

(a) *Relevance and importance of the research program.* (20 points)

The Secretary reviews each application to determine to what degree—

(1) The proposed activities are responsive to a priority established by the Secretary and address a significant need of a disabled target population and rehabilitation service providers;

(2) The overall research program of the Center includes appropriate interdisciplinary and collaborative research activities, is likely to lead to new and useful knowledge in the priority area, and is likely to become a nationally recognized source of scientific knowledge; and

(3) The applicant demonstrates that all component activities of the Center

are related to the overall objectives of the Center, and will build upon and complement each other to enhance the likelihood of solving significant rehabilitation problems.

(b) *Quality of the research design.* (35 points) The Secretary reviews each application to determine to what degree—

(1) The applicant proposes a comprehensive research program for the entire project period, including at least three interrelated research projects;

(2) The research design and methodology of each proposed activity are meritorious in that—

(i) The literature review is appropriate and indicates familiarity with current research in the field;

(ii) The research hypotheses are important and scientifically relevant;

(iii) The sample populations are appropriate and significant;

(iv) The data collection and measurement techniques are appropriate and likely to be effective;

(v) The data analysis methods are appropriate; and

(iv) The applicant assures that human subjects, animals, and the environment are adequately protected; and

(3) The application discusses the anticipated research results and demonstrates how those results would satisfy the original hypotheses and could be used for planning future research, including generation of new hypotheses where applicable.

(c) *Quality of the training and dissemination program.* (25 points): The Secretary reviews each application to determine the degree to which—

(1) The proposed plan for training and dissemination provides evidence that research results will be effectively disseminated and utilized based on the identification of appropriate and accessible target groups; the proposed training materials and methods are appropriate; the proposed activities are relevant to the regional and national needs of the rehabilitation field; and the training materials and dissemination packages will be developed in alternate media that is usable by people with various types of disabilities.

(2) The proposed plan for training and dissemination provides for—

(i) Advanced training in rehabilitation research;

(ii) Training rehabilitation service personnel and other appropriate individuals to improve practitioner skills based on new knowledge derived from research;

(iii) Training packages that make research results available to service providers, researchers, educators, disabled individuals, parents, and others;

(iv) Technical assistance or consultation that is responsive to the concerns of service providers and consumers; and

(v) Dissemination of research findings through publication in professional journals, textbooks, and consumer and other publications, and through other appropriate media such as audiovisual materials and telecommunications.

(d) *Quality of the organization and management.* (20 points): The Secretary reviews each application to determine the degree to which—

(1) The staffing plan for the Center provides evidence that the project director, research director (if designated), training director (if designated), principal investigators and other personnel have appropriate training and experience in disciplines required to conduct the proposed activities; the commitment of staff time is adequate to conduct all proposed activities; and the Center, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(2) The budgets for the Center and for each component project are reasonable, adequate, and cost-effective for the proposed activities;

(3) The facilities, equipment, and other resources are adequate and are appropriately accessible to persons with disabilities;

(4) The plan of operations is adequate to accomplish the Center's objectives and to ensure proper and efficient management of the Center;

(5) The proposed relationships with Federal, State, and local rehabilitation service providers and consumer organizations are likely to ensure that the Center program is relevant and applicable to the needs of consumers and service providers;

(6) The past performance and accomplishments of the applicant indicate an ability to complete successfully the proposed scope of work;

(7) The application demonstrates appropriate commitment and support by the host institution and opportunities for interdisciplinary activities and collaboration with other institutions and organizations; and

(8) The plan for evaluation of the Center provides for an annual assessment of the outcomes of the research, the impact of the training and dissemination activities on the target populations, and the extent to which the overall objectives have been accomplished.

**Instructions for Transmittal of Applications:**

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # Applicant must insert number and letter), Washington, DC 20202–4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# Applicant must insert number and letter), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

**Application Instructions and Forms:**

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

*Part I*

Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

*Part II*

Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

*PART III*

Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

**Note:** ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an *original signature.* No grant may be awarded unless a completed application form has been received.

**FOR FURTHER INFORMATION CONTACT:** National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3070, Washington, DC 20202. Telephone: (202) 732–1207; deaf and hearing impaired individuals may call (202) 732–1198 for TDD services.

**Program Authority:** 29 U.S.C. 762(b)(1).

Dated: December 16, 1988.

**Madeleine Will,**

*Assistant Secretary, Special Education and Rehabilitative Services.*

**Appendix**

*Frequent Questions*

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register.** However, there are no extensions or exceptions to the due date made for individual applicants.

Further information about mailing is included in Section IV of this Consolidated Application Package.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation.

It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One Program Competition in NIDRR or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

Applications for Rehabilitation Research and Training Centers should limit indirect cost rates to fifteen percent of the grant award, as noted in the program regulations and statute.

Applications in other programs that are for training activities should limit indirect charges to the lesser of the actual indirect costs or eight percent of the total direct costs of the program, as noted in the Education Department General Administrative Regulations (EDGAR).

All other applicants should limit indirect charges to the organization's approved rate. If the organization does not have an approved rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for grants under NIDRR programs.

8. Not Applicable.

9. Is There a Cost-Sharing or Matching Requirement?

Cost-sharing is required in the Research and Demonstration Projects program, with certain exceptions noted in the law; the Knowledge Dissemination and Utilization program; the Field-Initiated Research program; and the Career Development and Research Training program.

There are no cost-sharing requirements for the Innovation Grants or the Research Fellowships programs.

For the Rehabilitation Research and Training Centers and the Rehabilitation Engineering Centers, the Secretary has the option to require matching. It is generally the practice of the agency to require cost-sharing under these programs.

There is no set rate for cost-sharing. The cost-sharing is negotiated at the time an award is made and is not part of the evaluation of the application.

10. Not applicable.

11. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area is likely to receive approval in the investigator-initiated competitions.

12. How Do I Assure That My Application Will be Referred to the Most Appropriate Panel for Review?

Applicants should be sure that their applications are referred to the correct competitions by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424.

Applicants should assist NIDRR in ensuring that their Field-Initiated and Innovation Grant applications are referred to the most appropriate panels by emphasizing the focus of the proposed activity in the abstract of the project on the Standard Form 424. It would be helpful if the applicant would not use acronyms in the title and abstract, unless those acronyms are in common usage nationally.

13. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program and for other reasons. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date. Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

14. Can I Call NIDRR To Find Out if My Application is Being Funded?

No! When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

15. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Those budget projections are necessary and helpful for planning purposes. However, a complete budget and budget justification must be submitted for each year of the project and there will be negotiations on the budget each year.

16. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approved for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0043

# APPLICATION FOR FEDERAL ASSISTANCE

| | | |
|---|---|---|
| 1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction | 2. DATE SUBMITTED | Applicant Identifier |
| | 3. DATE RECEIVED BY STATE | State Application Identifier |
| | 4. DATE RECEIVED BY FEDERAL AGENCY | Federal Identifier |

**5. APPLICANT INFORMATION**

| | |
|---|---|
| Legal Name: | Organizational Unit: |
| Address *(give city, county, state, and zip code)*: | Name and telephone number of the person to be contacted on matters involving this application *(give area code)* |

**6. EMPLOYER IDENTIFICATION NUMBER (EIN):**

☐☐ – ☐☐☐☐☐☐☐

**7. TYPE OF APPLICANT:** *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

**8. TYPE OF APPLICATION:**

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

_____

**9. NAME OF FEDERAL AGENCY:**

**10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:** ☐☐.☐☐☐

TITLE:

**11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:**

**12. AREAS AFFECTED BY PROJECT** *(cities, counties, states, etc.)*:

| 13. PROPOSED PROJECT: Start Date | Ending Date | 14. CONGRESSIONAL DISTRICTS OF: a. Applicant | b. Project |
|---|---|---|---|
| | | | |

**15. ESTIMATED FUNDING:**

| | | |
|---|---|---|
| a. Federal | $ | .00 |
| b. Applicant | $ | .00 |
| c. State | $ | .00 |
| d. Local | $ | .00 |
| e. Other | $ | .00 |
| f. Program Income | $ | .00 |
| g. TOTAL | $ | .00 |

**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?**

☐ Yes If "Yes," attach an explanation. ☐ No

**18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED**

| | | |
|---|---|---|
| a. Typed Name of Authorized Representative | b. Title | c. Telephone number |
| d. Signature of Authorized Representative | | e. Date Signed |

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

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## INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

OMB Approval No. 0348-0044

## BUDGET INFORMATION — Non-Construction Programs

### SECTION A – BUDGET SUMMARY

| Grant Program Function or Activity (a) | Catalog of Federal Domestic Assistance Number (b) | Estimated Unobligated Funds | | New or Revised Budget | | |
|---|---|---|---|---|---|---|
| | | Federal (c) | Non-Federal (d) | Federal (e) | Non-Federal (f) | Total (g) |
| 1. | | $ | $ | $ | $ | $ |
| 2. | | | | | | |
| 3. | | | | | | |
| 4. | | | | | | |
| 5. TOTALS | | $ | $ | $ | $ | $ |

### SECTION B – BUDGET CATEGORIES

| 6 Object Class Categories | GRANT PROGRAM, FUNCTION OR ACTIVITY | | | | Total (5) |
|---|---|---|---|---|---|
| | (1) | (2) | (3) | (4) | |
| a. Personnel | $ | $ | $ | $ | $ |
| b. Fringe Benefits | | | | | |
| c. Travel | | | | | |
| d. Equipment | | | | | |
| e. Supplies | | | | | |
| f. Contractual | | | | | |
| g. Construction | | | | | |
| h. Other | | | | | |
| i. Total Direct Charges (sum of 6a - 6h) | | | | | |
| j. Indirect Charges | | | | | |
| k. TOTALS (sum of 6i and 6j) | $ | $ | $ | $ | $ |
| 7. Program Income | $ | $ | $ | $ | $ |

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## SECTION C - NON-FEDERAL RESOURCES

| (a) Grant Program | (b) Applicant | (c) State | (d) Other Sources | (e) TOTALS |
|---|---|---|---|---|
| 8. | $ | $ | $ | $ |
| 9. | | | | |
| 10. | | | | |
| 11. | | | | |
| 12. TOTALS (sum of lines 8 and 11) | $ | $ | $ | $ |

## SECTION D - FORECASTED CASH NEEDS

| | Total for 1st Year | 1st Quarter | 2nd Quarter | 3rd Quarter | 4th Quarter |
|---|---|---|---|---|---|
| 13. Federal | $ | $ | $ | $ | $ |
| 14. NonFederal | | | | | |
| 15. TOTAL (sum of lines 13 and 14) | $ | $ | $ | $ | $ |

## SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

| (a) Grant Program | FUTURE FUNDING PERIODS (Years) | | | |
|---|---|---|---|---|
| | (b) First | (c) Second | (d) Third | (e) Fourth |
| 16. | $ | $ | $ | $ |
| 17. | | | | |
| 18. | | | | |
| 19. | | | | |
| 20. TOTALS (sum of lines 16 -19) | $ | $ | $ | $ |

## SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

| 21. Direct Charges: | 22. Indirect Charges: |
|---|---|

23. Remarks

SF 424A (4-88) Page 2
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## INSTRUCTIONS FOR THE SF-424A

**General Instructions**

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A,B,C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A,B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

**Section A. Budget Summary**
**Lines 1-4, Columns (a) and (b)**

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

**Lines 1-4, Columns (c) through (g.)**

*For new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

**Lines 1-4, Columns (c) through (g.)** ( continued)

*For continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

*For supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

**Line 5** — Show the totals for all columns used.

**Section B Budget Categories**

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

**Lines 6a-i** — Show the totals of Lines 6a to 6h in each column.

**Line 6j** – Show the amount of indirect cost.

**Line 6k** – Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

## INSTRUCTIONS FOR THE SF-424A *(continued)*

**Line 7** – Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

**Section C. Non-Federal-Resources**

**Lines 8-11** – Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

**Column (a)** – Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

**Column (b)** – Enter the contribution to be made by the applicant.

**Column (c)** – Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

**Column (d)** – Enter the amount of cash and in-kind contributions to be made from all other sources.

**Column (e)** – Enter totals of Columns (b), (c), and (d).

**Line 12** — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

**Section D. Forecasted Cash Needs**

**Line 13** – Enter the amount of cash needed by quarter from the grantor agency during the first year.

**Line 14** – Enter the amount of cash from all other sources needed by quarter during the first year.

**Line 15** – Enter the totals of amounts on Lines 13 and 14.

**Section E. Budget Estimates of Federal Funds Needed for Balance of the Project**

**Lines 16 - 19** – Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

**Line 20** – Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

**Section F. Other Budget Information**

**Line 21** – Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

**Line 22** – Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

**Line 23** – Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

## ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

| SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL | TITLE |
|---|---|
| APPLICANT ORGANIZATION | DATE SUBMITTED |

## Certification Regarding
## Debarment, Suspension, and Other Responsibility Matters
## Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date



ED Form GCS-008, 6/88

## Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

## Certification Regarding
## Debarment, Suspension, Ineligibility and Voluntary Exclusion
## Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

**(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)**

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature Date



ED Form GCS-009, 5-88

## Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntary excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

ED Form GCS-009, 6/88

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Part IV

# Federal Deposit Insurance Corporation

12 CFR Part 308

Rules of Practice and Procedures; Final Rule

**FEDERAL DEPOSIT INSURANCE CORPORATION**

**12 CFR Part 308**

**Rules of Practice and Procedures**

**AGENCY:** Federal Deposit Insurance Corporation.

**ACTION:** Final rule.

**SUMMARY:** The FDIC is adopting a revised 12 CFR Part 308—Rules of Practice and Procedures—which governs the conduct of administrative proceedings before the FDIC. The changes include a reorganization of existing sections of Part 308, revisions of some sections that existed previously, and the addition of new sections. Provisions that the FDIC has added or significantly revised concern the following general topics: authority of the FDIC Board of Directors ("Board") and the Executive Secretary, selection and authority of administrative law judges, appearance before the FDIC, good faith certification, pleadings, intervention, consolidation and severance of actions, scope of and time limits for discovery, motions, prehearing preparations and submissions, conduct and timing of hearings, evidence, use of written testimony, stays of administrative orders pending appeals, collateral attacks on administrative proceedings, conflicts of interest, sanctions, suspension and disbarment, ex parte communications, and miscellaneous provisions including ones concerning the maintenance of the administrative record, filing and service of papers, construction of time limits, and transition rules. Additionally, sections that are neither new nor substantially revised often contain some language changes in order to enhance clarity. The purpose of the provisions proposed herein is to secure a just and orderly determination of administrative proceedings before the FDIC.

**EFFECTIVE DATE:** January 1, 1989.

**FOR FURTHER INFORMATION CONTACT:** Nancy L. Alper, Senior Attorney, Compliance and Enforcement Section, telephone 202/898-3720, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429; or Christine C.A. Tullio, Senior Regional Attorney, Regional and Corporate Affairs Branch, telephone 312/207-0495, Federal Deposit Insurance Corporation, 30 South Wacker Drive, Suite 3300, Chicago, Illinois 60606.

**SUPPLEMENTARY INFORMATION:** On February 12, 1988, the Board of Directors of the FDIC approved the publication in the **Federal Register** of the revisions to Part 308 of its regulations entitled "FDIC Rules of Practice and Procedures" (12 CFR Part 308) (53 FR 5392, February 24, 1988). Part 308 had been selected for review under the FDIC's Regulation Review Program (see 50 FR 14247, April 11, 1985). This revised Part 308 is a result of the review conducted.

**I. General Purpose of the Revisions**

Existing Part 308 was largely written in the mid-1970s. At that time the FDIC brought relatively few administrative enforcement actions, and the cases that were brought were almost invariably settled. In the intervening years, the number of FDIC administrative enforcement proceedings has increased dramatically, and the FDIC now tries numerous proceedings each year. This increased experience has persuaded us that existing Part 308 is inadequate to deal with the volume and nature of current FDIC administrative enforcement proceedings. As a result, the FDIC has revised Part 308 and with this **Federal Register** notice is adopting the new Part 308 with certain modifications as suggested by the comments.

The most substantive of the revisions of Part 308 flow from one, or more, of the following problems. First, a disproportionate number of cases take longer than they should to come to hearing. Second, pre-hearing practices and rulings vary widely among administrative law judges handling FDIC proceedings. And third, many Respondents and/or Respondents' counsel do not consistently abide by orders of the administrative law judges and/or the provisions of Part 308.

To alleviate these problems, revised Part 308, principally subpart B, spells out in considerable detail what each party may and must do to prepare a proceeding for hearing, and when those acts must be done. These provisions should move cases forward to a relatively early hearing (generally 120 to 150 days after the proceeding is commenced); eliminate the need to go to the administrative law judge on a number of issues that are not resolved in existing Part 308; give considerable guidance to administrative law judges hearing the issues that still require litigation; and reduce the ambiguities and gaps that are often given as explanations for failures to comply with orders and regulations. Failures to comply should be further reduced by the introduction of a good faith pleading requirement and the availability of sanctions and, in extreme cases, suspension or disbarment from practicing before the FDIC.

The bulk of the substantive revisions are found in subpart B, which has been largely rewritten. Subparts A and K also contain considerable substantive revisions. The changes in certain other subparts are largely, but not exclusively, made to conform those subparts to the general provisions of subpart B or to resolve ambiguities in the existing language. Given the extent of the revisions, little purpose would be served by pointing out in the text that the language in almost every important provision in subparts A, B, and K is either new to Part 308 or revises the existing language.

In addition to these modifications, revisions to other subparts have been made. Subpart L, which contained rules of practice and procedure relating to proceedings under both section 8(g) of the Federal Deposit Insurance Act ("Act"), 12 U.S.C. 1818(g), and section 19 of the Act, 12 U.S.C. 1829, has been divided into two subparts, subparts N and M, respectively. This should clarify the differences between the two types of proceedings and the rules of procedure for each action.

Similarly, subpart G has been divided into two parts. Subpart G now consists of the rules of practice and procedure for actions arising under section 8(e) of the Act, 12 U.S.C. 1818(e), governing removal, prohibition or suspension orders. New rules concerning applications for the termination of removal or prohibition orders are being drafted and should appear as subpart L. Since subpart L would be the first codification of rules of practice and procedure for applications to terminate section 8(e) orders, it is expected that, subpart L will be put out for comment under separate publication in the **Federal Register**.

Finally, it is expected that a new subpart, subpart O, will be created. This subpart would codify longstanding procedures which have governed a bank's contesting the imposition of civil money penalties for the untimely filing of Reports of Condition and Income. It is anticipated that subpart O will be included in the separate publication in the **Federal Register**.

Finally, we note that while several of the concepts, and most of the language, in revised Part 308 is new to the part, those concepts, and much of the language, are not unique to revised Part 308. Rather, most have their origins in the Federal Rules of Civil Procedure, other agencies' regulations, and, to a lesser degree, in standing pretrial orders and practices of various United States district court judges and administrative

law judges and in the Federal Rules of Evidence.

**II. Comments and Discussion**

*A. Comment Summary*

The FDIC received four comment letters on its February 12, 1988 proposed rule. Overall, the comments commended the undertaking of the FDIC in substantially revising its rules of practice and procedure and praised the undertaking as thorough, fair and constituting an incorporation of procedural safeguards and facilitatory features. The comments also raised certain questions and objections, some of which overlapped.

*B. Specific Objections Raised and Suggested Changes*

(1) Several commenters suggested that Rule 403 of the Federal Rules of Evidence ("FRE") should be incorporated into Part 308. FRE Rule 403 permits the exclusion of evidence where the probative value is outweighed by other factors such as the potential for undue consumption of time. The rationale for inclusion of FRE Rule 403 is that the rules of evidence set forth in Part 308 do not provide sufficient guidance to administrative law judges on the admissibility of evidence.

(2) Questions were raised concerning the tying of the admissibility of evidence to the date of the Notice. The reasoning for raising this issue was that the date of issuance of the Notice was not felt to have any necessary relevance to the fact of the violation. The concern, expressed by the commenters, was that institutions and/or respondents in similar proceedings would be bound by different evidentiary rules because of differing dates of issuance of the Notice.

(3) One objection was made concerning the restriction of introducing evidence of any act or event occurring after the date of the Notice. The rationale was that this restriction ignores the distinction between the fact of the violation of law or regulation ("Violation") and/or the fact of the unsafe or unsound practice ("Practice"), and the fashioning of the remedy. With respect to the fact of the Violation and/or the Practice, the commenter agreed that evidence of events, conditions and acts subsequent to the examination of a bank is irrelevant. The commenter stated that the rule should be inflexible in prohibiting the admission of evidence occurring subsequent to the examination.

However, the commenter asserted that such evidence is necessary in determining what is the appropriate remedy irrespective of what type of enforcement action is involved. It was suggested that § 308.38(a)(2) be amended to provide that evidence subsequent to the date of the Violation or Practice is irrelevant to the fact of that Violation or Practice and permit the administrative law judge to determine the relevancy of evidence as to the other issues.

(4) Objections were also raised against permitting only document discovery and providing for depositions solely where witnesses are unavailable for the hearing. 12 CFR 308.27–308.29.

(5) One commenter objected to the process of filing exceptions to a recommended decision as being archaic and cumbersome. Instead, it was recommended that briefs be used which set out a statement of the facts and reference the record.

(6) Certain commenters read § 308.41(c) to mean that appeals by parties to an enforcement action are prohibited.

(7) It was suggested that decisions of the administrative law judges be treated as initial decisions of the agency, which are final unless they are appealed to and reversed by the Board of Directors of the FDIC, instead of being considered as recommended decisions which require a final decision by the Board.

(8) With respect to subpoenas, it was recommended that subpoenas should be standardized into a simple format and be pre-printed. It was also suggested that subpoenas should be pre-signed by an authorized official and should be issued by the Office of the Executive Secretary. The rationale for this last suggestion is that the role of administrative law judges should be limited to deciding objections. However, it was recommended that when an issue was raised as to whether top officials were subpoenaed by respondents, then the administrative law judge should determine whether to issue the subpoenas. The commenter stated this would avoid abuse of process by respondents who sought to harass senior FDIC officials.

(9) One commenter suggested that § 308.40(a) should be amended to provide for the commencement of the 45-day decision-writing period for administrative law judges after the filing of reply briefs.

(10) Another commenter suggested that § 308.48 is overly broad by prohibiting any material *ex parte* communications and stated that the present provision which prohibits *ex parte* communications relevant to the merits is sufficient.

(11) Issues were raised concerning whether § 308.50 may violate the Agency Practice Act, 5 U.S.C. 500, by providing for automatic suspension from practice before the FDIC of an individual who was convicted of a felony or a misdemeanor involving moral turpitude within the past ten years. It was suggested that the summary suspension of attorneys for contemptuous conduct by an administrative law judge may be too harsh. An interlocutory appeal to the FDIC was suggested as ameliorating this rule.

(12) Questions were raised concerning whether respondents should be provided with a Wells-type submission process such as that which the Securities and Exchange Commission employs. Two commenters recommended that the FDIC implement such a process, while one opposed it.

*C. Analysis and Modifications*

(1) While it is felt that § 308.38 provides sufficient guidelines to administrative law judges on the admissibility of evidence, § 308.38(a) has been amended to include language from FRE Rule 403. The FDIC believes that with this additional language, an administrative law judge now has the proper tools to make determinations on the admissibility of evidence.

(2) The FDIC when revising Part 308 considered and discussed what general date should be used to demarcate when evidence concerning the fact of a Violation or the fact of a Practice would be admissible. The date of the commencement of the examination was considered at length as the most obvious choice. The rationale for this was that the date would be well-known, and that it had factual significance to the fact of the Violation or of the Practice.

Further analysis, however, revealed that the date of the commencement of the examination was too narrow. While this date would work well when, for example, a section 8(b) enforcement action was being litigated, the date would not be workable in an enforcement proceeding involving, for example, a section 8(c) action. Under this scenario, if an examiner, while examining a bank, uncovered a transaction which threatened the solvency of the bank, a section 8(c) action would be mandated. The basis for the action, however, would not rest upon the bank examination but rather upon the particular transaction which had been uncovered. In going forward with an enforcement action, then, the date of the commencement of the examination would be irrelevant and immaterial to a determination of the admissibility of the evidence. What would be relevant would be the date of

the transaction and the circumstances surrounding the transaction. Similarly, where an enforcement action was based upon a visitation report instead of a Report of Examination, the date of the commencement of the examination would have little or no legal significance or relationship to the enforcement action.

Accordingly, the FDIC continues to believe that the most efficient and workable general rule to limit the admissibility of evidence is to tie admissibility to the date of the Notice.

(3) The FDIC also considered at length the question of whether evidence of any act or event occurring after the date of the Notice should be admissible at the hearing. In light of the comments received as well as the statutory requirements of section 8, the FDIC upon careful consideration has determined to modify its rule governing the admissibility of evidence.

In order to fashion an appropriate remedy for the particular enforcement action involved, the FDIC has determined that evidence subsequent to the date of the Notice may be relevant. Such evidence, however, may be admitted only for the exclusive and limited purpose of assisting in fashioning an appropriate remedy. Accordingly, the administrative law judge must make a finding on the record that such evidence is necessary to fashion a remedy before it can be admitted. What is contemplated by this modification, then, is a proceeding where the fact of the Violation and/or Practice must be established first by evidence occurring up to the date of the Notice. Only once the fact of the Violation and/or Practice has been established and the administrative law judge makes a finding to that effect, may the administrative law judge at this point entertain motions for the admission of evidence occurring after the date of the Notice and may admit such evidence after a specific finding that the evidence is necessary to fashion a remedy.

The adoption of this modification to § 308.38(a)(2) will serve several purposes. First, by limiting the admissibility of evidence to prove the fact of a Violation or Practice to evidence which occurred up to the date of the Notice, the modified rule will provide a time frame for the demarcation of facts relevant to proving the Violation or the Practice. Second, by requiring that the administrative law judge make a specific finding that evidence subsequent to the date of the Notice is necessary to fashion a remedy, the regulation will prevent the record from being cluttered with immaterial and irrelevant evidence concerning the fact of the Violation or Practice. Finally, the modified rule will ensure that a remedy is devised that addresses the specific problems which require correction.

(4) The FDIC additionally considered at length the scope of discovery which it would permit under its revised Part 308. In attempting to strike a balance between the interests and needs of the FDIC and the respondent banks and/or individuals, the FDIC undertook research relative to the constitutional mandates for the scope of discovery. The research revealed that parties to judicial or quasi-judicial actions are not entitled to pre-trial discovery as a matter of constitutional right. *National Labor Relations Board* v. *Interboro Contractors, Inc.*, 432 F.2d 854, 858 (2d Cir. 1970); and 4 STEIN, MITCHELL, MEZINES, ADMINISTRATIVE LAW § 23.01[1] at 23–7 (1987) and cases cited therein.

Further, one of the principal and stated purposes of the revisions to Part 308 was to shorten the time it has taken a disproportionate number of cases to reach the hearing stage. This purpose is fully consistent with the expedient nature of the FDIC's trial processes as mandated by the Federal Deposit Insurance Act, 12 U.S.C. 1811–1831d. The FDIC determined that the deposition process for purposes of discovery is inconsistent with its statutory mandates. Accordingly, in balancing the needs and interests of the parties to an FDIC enforcement proceeding, the FDIC has provided only for document discovery as the best means of securing a just and orderly disposition of an enforcement action.

(5) Section 557(c) of the Administrative Procedure Act, 5 U.S.C. 557(c), specifically authorizes parties in a hearing to have a reasonable opportunity to submit exceptions to recommended decisions of administrative law judges. This procedure for taking exception to recommended decisions has been implemented for many years and has widespread use at many agencies. While the commenter objected to the exception process as being archaic, burdensome and time-consuming, the FDIC believes that this procedure assures the parties that a fair, just and detailed review of the record below and of the recommended decision will be undertaken. Accordingly, the FDIC will continue to use the exception process for any appeals to the Board of Directors of the FDIC from any recommended decision of an administrative law judge. It should also be noted that Part 308 expressly authorizes the filing of briefs in support of any exceptions that are taken.

(6) Contrary to the misinterpretation given to subsection c of section 308.41 by certain commenters, § 308.41 does permit the filing of exceptions and supporting briefs asking the FDIC's Board of Directors to review "* * * the failure of the administrative law judge to make any recommendation for relief, finding or conclusion; to the admission or exclusion of evidence; and to any other ruling." 12 CFR 308.41(a)(1). Subsection c of section 308.41 merely prohibits the filing of replies to the exceptions.

This prohibition does not violate the Administrative Procedure Act ("APA"). Section 557(c) of the APA, 5 U.S.C. 557(c), provides that parties to a proceeding be given a reasonable opportunity to submit proposed findings and conclusions to an agency fact finder or to submit exceptions to the recommended decision of a subordinate agency fact finder for agency review. The case law interprets this provision as providing that a party to a proceeding is entitled to a reasonable opportunity to file proposed findings and conclusions *or* exceptions. The APA does not require that a party have a reasonable opportunity to file both. (See *Watson Brothers Transportation Co. v. United States*, 180 F. Supp. 732, 740 (D. Neb. 1960)). The FDIC's revised rules of practice and procedure grant a party to a proceeding the opportunity to file both findings and conclusions as well as exceptions. The FDIC believes that this provides the parties with sufficient opportunity to narrow the focus of the issues, as well as accords the parties due process.

(7) The Administrative Procedure Act provides that the individual who presides over the taking of evidence in a formal hearing may issue an initial decision or a recommended decision. 5 U.S.C. 554(d). The difference between the two types of decisions is that an initial decision becomes the final decision of the agency unless there is further agency action by an appeal being taken or the agency *sua sponte* undertakes to review such a decision. 5 U.S.C. 557(b). A recommended decision, on the other hand, does not become a final agency action unless the agency adopts the recommended decision.

The FDIC has determined to maintain its present two-tier approach to its administrative enforcement proceedings of a recommended decision made by an administrative law judge followed by a review, and final decision and order by the Board of Directors of the FDIC. It is felt that this approach accords the

parties to the proceedings with due process protections by providing, *inter alia*, a review and appeal of the findings, conclusions, admissions of evidence, and any other ruling made by the administrative law judge. 12 CFR 308.41. Additionally, it appears unlikely that many parties who had been willing to see a matter through a full administrative hearing would then fail to appeal an adverse decision to the Board of Directors. Thus, the proposed change does not appear likely to speed (and could well slow) the entry of final agency decisions in numerous proceedings.

(8) The FDIC has concluded that the comment, concerning standardizing subpoenas into pre-printed forms, should be adopted. Accordingly, pre-printed subpoenas duces tecum and subpoenas testificandum will be issued as set forth pursuant to 12 CFR 308.28, 308.35, and subpart K of Part 308. Upon the granting of a motion for a subpoena, the presiding officer in the particular proceeding will execute and issue the appropriate subpoena. Requiring the presiding officer at the proceeding to execute and issue the subpoena will expedite the administrative action being undertaken.

(9) As set forth below, the FDIC has determined to modify Part 308 to expand the time tables for the administrative enforcement process by 30 days. This in conjunction with modifying Part 308 to include a three-day mail rule should provide sufficient time for all interested parties to a proceeding and at the same time preserve the expeditious nature of FDIC administrative enforcement actions.

(10) The Administrative Procedure Act prohibits "ex parte communication[s] relevant to the merits". 5 U.S.C. 557(d). In revising Part 308, the FDIC determined that clarification of the APA's definition of ex parte communication was appropriate since there is considerable uncertainty as to what "relevant to the merits" means. Accordingly, the FDIC adopted the revised definition in § 308.48 and rejects the comment on this issue.

(11) Case law has consistently upheld an agency's authority to set standards for admission to practice before it as well as to establish criteria for suspension, disbarment or other sanctions for attorney misconduct. The various provisions of Part 308 governing attorney practice before the FDIC comport with concepts of due process, including notice, an opportunity to have a hearing and a right of review. The FDIC believes that these provisions will contribute to a fair, expeditious and just resolution of enforcement proceedings and accordingly, adopts these revisions to Part 308.

(12) Much discussion has ensued concerning whether a formal or informal procedure, such as the SEC's Wells-submissions, should be implemented to allow targets of investigations an opportunity to respond before official action is taken. A report commissioned by the Administrative Conference of the United States rejects the concept of any such procedure for the FDIC, as well as the other banking agencies. The rationale for this conclusion was that the process of bank enforcement provides informal opportunities for exchanges of views throughout the early stages of an administrative proceeding before a formal enforcement action is brought. Malloy, "Report to the Administrative Conference of the United States on Adjudication Practices and Procedures of the Federal Bank Regulatory Agencies" (1987) at 53, n. 197. The FDIC is in agreement with this report. The informal mechanisms in place for resolving regulatory problems normally provide targeted respondents an opportunity for presenting their position and resolutions to those problems, while at the same time providing a balance to the regulatory process by permitting the regulators to respond swiftly and efficiently to the problems uncovered in the bank examination. Accordingly, the FDIC has determined that it will not adopt any formal or informal Wells-type submissions procedures.

## III. Section-by-Section Summary and Discussion

### *A. Subpart A—Definitions and General Provisions (§§ 308.01–.03)*

Section 308.01, "Definitions," leaves unchanged the terms "FDIC," "foreign bank," "insured bank," "insured branch," and "official." Some definitions which applied to only discrete portions of Part 308 were either broadened to apply to all of Part 308 or were moved to the subpart to which the definition was applicable. An example of the former is the term "person;" an example of the latter is "ex parte communication."

Several definitions were deleted because changes in the regulation made them unnecessary. More specifically, changes in subpart K eliminate the need to define "presiding officer" and "proceeding pursuant to section 10(c)." The terms "bank" and "officer" have been deleted because there seemed no reason to define them in light of the other definitions. Finally, definitions which are completely new or have been changed are the terms "Act," "Board's designee" (which is broken out from the term "Board of Directors"), "Executive Secretary" (which is expanded to include his or her designee), the term "Notice" (which is defined to include the entire document issued by the Board of Directors or its designee to commence an administrative proceeding), and the term "Respondent" (which is defined for the first time in the proposed regulation).

Section 308.02, "Rules of Construction," has been expanded to make clear that any use of masculine, feminine, or neuter genders should be read as encompassing all three. Further, because subpart B of Part 308 allows for non-attorney representation under certain circumstances, the Rules of Construction have been expanded to clarify that any use of the term "attorney" or "counsel" shall be read to include non-attorney representatives. And, the rules of construction explicitly state that any action required to be taken by a party to a proceeding may be taken by that party's attorney or non-attorney representative.

Section 308.03, "Transition Rules," is written to avoid confusion concerning when to apply existing Part 308 and when to apply revised Part 308. However, because revised Part 308 provides resolutions to many questions which are not specifically addressed in existing Part 308, section 308.03 suggests that revised Part 308 may under appropriate circumstances be used for guidance in cases governed by existing Part 308.

### *B. Subpart B—Rules of Practice (§§ 308.04–.50)*

#### 1. General Provisions (§§ 308.04–.19)

As set forth in § 308.04, "Scope," the rules of practice set forth in subpart B are to be followed in hearings on the record pursuant to the provisions of the Federal Deposit Insurance Act, unless otherwise specified in subparts C through L. Paragraphs (a) through (g) of § 308.04 list specific provisions of the Federal Deposit Insurance Act, and other applicable law, to which subpart B pertains.

Section 308.05, "Authority of Board and Executive Secretary," makes explicit that the Board may perform, direct performance of, or waive performance of any act which could otherwise be done or ordered by the Executive Secretary or an administrative law judge. Additionally, the section spells out that the Executive Secretary may act with the same authority as an administrative law judge when no judge has been given jurisdiction over a proceeding. The exception to this provision is that the

Executive Secretary may not hear a case on its merits or make a recommended decision to the Board. At the same time, § 308.21(d) makes clear that a default order may be entered by the Executive Secretary.

In accordance with § 308.06, "Appointment of Administrative Law Judges," a hearing which falls under the scope of subpart B will be held before an administrative law judge appointed by the United States Office of Personnel Management. The Executive Secretary shall make the request for an administrative law judge to the United States Office of Personnel Management, and shall advise the parties in writing that a judge has been appointed.

Section 308.07, "Powers of Administrative Law Judges," corresponds to § 308.07(b) of existing Part 308. Section 308.07(b) of the new regulation spells out that the administrative law judge obtains jurisdiction over a proceeding upon appointment and retains that jurisdiction until a recommended decision is rendered, assuming the administrative law judge has not resigned or been removed. If a matter is remanded by the Board, the administrative law judge regains jurisdiction over the proceeding.

Section 308.07(b)(7) of the amended regulation clarifies § 308.08(b)(9) of the existing regulation by stating that the administrative law judge has the power to deny dispositive motions such as motions for summary judgment and motions to dismiss, but may only recommend to the Board a decision granting a dispositive motion.

Section 308.08, "Appearance Before the FDIC," has undergone several changes from the previous provision at § 308.04. First, any appearance by an attorney, or a duly authorized official of a corporation, government unit, or partnership is subject to the conditions of § 308.47, "Conflict of Interest," and the limitations of § 308.50, "Suspension and Disbarment." Section 308.08(c) also allows for representation of non-parties and provides that a non-party may be represented by any person qualified to represent a party before the FDIC.

The concept presented in § 308.09, "Short and Plain Statement Required," is reduced to writing for the first time in Part 308. As the title suggests, any presentation of record must contain a short and plain statement of the claim or position being advanced, the factual and legal basis for the position, the relief requested, and the basis for granting such relief.

Rule 11 of the Federal Rules of Civil Procedure is the basis for § 308.10, "Good Faith Certification." The general requirement of § 308.10(a) is that every written presentation made by a party after the issuance of the Notice must be signed by that party or his or her attorney, as set out in § 308.10(b). A signature on a post-Notice written presentation constitutes a certification that the attorney or party has read the written presentation, that the presentation is well-grounded in fact and is warranted by existing law or a good faith argument for extending or modifying existing law, and is not interposed for any improper purpose to the best of that attorney's or party's knowledge, information, and belief formed after reasonable inquiry. Failure to sign a written presentation results in it being stricken from the record unless it is signed promptly after the signature omission is called to the attention of the attorney or party. Paragraph (c) of § 308.10 provides that the making of an oral motion or argument constitutes the same certification as the signing of a written presentation. Finally, § 308.10(d) grants authority to impose sanctions authorized in §§ 308.49 and 308.50 upon the attorney, the represented party, or both for violation of the good faith certification requirements.

Housekeeping matters concerning maintenance of the record and filing of papers are covered in §§ 308.11 and 308.12, respectively. Section 308.11, "Maintenance of the Record," states that the Executive Secretary shall maintain the official record for all proceedings until such time as an administrative law judge is appointed. Section 308.12, "Filing Papers," provides that the original and one copy of all papers required to be filed under subpart B shall be filed with the Executive Secretary. Certain exceptions apply, including pre-marked proposed exhibits, transcripts, and hearing exhibits, which must be filed with the administrative law judge and need not be filed by the parties with the Executive Secretary.

Section 308.13, "Service of Papers," provides that the Executive Secretary, or such other person as the Board's designee may cause to make service, shall serve all papers required to be served by the Board or its designee. Any papers filed in accordance with subpart B shall be served upon the attorneys of record for all represented parties to the proceeding and upon all unrepresented parties. Service by the Executive Secretary, a person assigned by the Board's designee, or a party to the proceeding is to be accomplished in the manner set forth in § 308.13(a). Service of subpoenas may be accomplished in any manner set out in § 308.13(c).

Section 308.14, "Construction of Time Limits," sets forth the general rule in computing time periods prescribed in subpart B. The date of the act or event of the default from which the time period begins to run is not to be included in the computation, but the last day is to be included. If the last day falls on a Saturday, Sunday, or federal holiday, the last day of the designated time period becomes the next day that is not a Saturday, Sunday, or federal holiday. Intervening Saturdays, Sundays, and federal holidays are not included in the computation of the designated period unless the time period involved is more than ten days.

Section 308.14(b) sets forth the rules for proper service. To accomplish timely service, the serving party may make personal service, deliver the papers to a reliable commercial service or to the U.S. Post Office for Express Mail delivery, or mail by first class, registered, or certified mail. If the serving party chooses to use first class, registered, or certified mail, section 308.14(c) provides that three days shall be added to the prescribed period.

Section 308.15, "Time Limits," provides that the administrative law judge, for good cause shown, may fix or change the time when an action shall be taken and fix or change the place for a hearing to commence or continue. Extensions of time normally require a decision by the administrative law judge that there is good cause for the extension. However, a finding of good cause need not be made where the parties agree to a delay of not more than five days.

Section 308.15(c) sets forth the course of action to be followed when a bilateral settlement agreement has been agreed to by a Respondent and FDIC enforcement counsel, but is awaiting a final decision by the FDIC. In such instances, at the request of either signing party, the proceedings are to be stayed as to any settling Respondent pending a final FDIC decision on whether to accept the settlement. A bilateral settlement agreement between a Respondent and the FDIC shall not be a basis for delaying the proceeding as to any non-settling Respondent, unless such other Respondent and the FDIC agree to a delay, and the delay is approved by the administrative law judge. Should the FDIC determine to reject a bilateral settlement proposal, the proceeding shall resume at the point it had reached when it was interrupted due to the settlement proposal.

Section 308.16, "Witness Fees and Expenses," provides that subpoenaed witnesses shall be paid the same fees as are paid in the United States district courts, with the exception of parties

subpoenaed under discovery subpoenas pursuant to § 308.27. Such parties are not entitled to receive fees. Section 308.16 also makes clear that the FDIC shall not be required to pay any fees or expenses of a witness it does not subpoena.

Unilateral settlement offers to the Board are covered by § 308.17. Any Respondent may, at any time, without prejudice to the rights of any party, submit a unilateral settlement proposal to the Executive Secretary for consideration by the Board or its designee. However, such a submission does not provide a basis for adjourning or delaying any portion of a proceeding, nor is it admissible into evidence over the objection of any party. Further, a party that submits a unilateral settlement offer waives any objection to the participation of interested persons made with respect to such an offer.

Section 308.18 addresses confidentiality issues that arise in proceedings under subpart B. Hearings under subpart B will ordinarily be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest. No Respondent shall disclose or use any information which is not publicly available and which was obtained through discovery or at a hearing for any purpose other than litigation of the proceeding, including any appeal of the proceeding. If an FDIC proceeding or other order has been appealed to, or otherwise brought before, any court of the United States, § 308.18 is not to be read as limiting public access to any record, papers filed, or evidence presented in the court proceeding. Finally, § 308.19 spells out that nothing contained in subpart B shall be construed to limit the right of the FDIC to conduct examinations or visitations of any insured bank, or the right of the FDIC to conduct any form of investigation authorized by law.

2. Pleadings and Parties (§§ 308.20–.24)

A meaningful discussion of the pleadings and parties section of subpart B is most easily accomplished by beginning with a brief discussion of § 308.34, "Hearings." The overall structure of this portion of subpart B is premised on hearings commencing approximately 120 days after the Respondent's receipt of the Notice. This period may be extended for up to 30 days upon a finding by the administrative law judge that there is good cause for a continuance. A hearing is not to be continued to a date more than 150 days after receipt of the Notice unless one of five findings is made on the record. *See* § 308.24(a)(1)(i)–(v). The general 120-day rule is not applicable to hearings held under 12 U.S.C. 1818(b) and 1818(e) if any party objects to continuing the hearing beyond the 60-day period provided in those sections, unless the administrative law judge makes a determination that holding a hearing within 60 days is impractical, would materially and unfairly prejudice one or more parties, or otherwise would be unjust. Because the FDIC has found that scheduling a formal hearing within 60 days after the proceeding is commenced tends to result in numerous practical problems, § 308.34(a)(2) allows the parties to an action under 12 U.S.C. 1818(b) or 1818(e) to extend the 60-day period to the general 120 to 150 day schedule without seeking approval from the administrative law judge.

For purposes of illustration, we assume in the following discussion that the hearing will be held 120 days after service of the Notice.[1]

Section 308.20, "The Notice," provides that the 120-day time period begins running when the Notice is served. As provided in § 308.01(j), the Notice includes the entire document issued by the Board of Directors or its designee and served upon the party, which initiates the proceeding conducted under Part 308. In addition to giving notice of the basic facts and law upon which action is proposed to be taken, the Notice is to include a prayer for relief and/or a proposed order.

The Notice, among other things, advises the Respondent that an answer must be filed within 20 days after service of the Notice as required by § 308.21. In actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j), and in a denial of a change in bank control under 12 U.S.C. 1817(j)(4), the Notice advises the Respondent that a request for a hearing must also be filed. The extension of time from 10 to 20 days for filing a request for a hearing in actions under 12 U.S.C. 1818(i) and 1828(j) was made in order to reduce confusion that has arisen because of the difference in when the request for a hearing, and the answer, were due in such cases.

In addition to setting forth the time period in which to file an answer (paragraph (a)) and the requirements of the answer (paragraph (b)), § 308.21, "Answer," sets forth the effect of admitting allegations (paragraph (c)). When the Respondent's answer admits the allegations of fact, the first portion of paragraph (c) limits any hearing to the issue of relief. The second portion of paragraph (c) provides that where the Respondent's answer admits the allegations of fact and does not contest the relief requested, the administrative law judge is to certify the record to the Executive Secretary who shall have authority to enter an order granting the relief sought by the Notice.

Section 308.21(d) provides that failure of a Respondent to file an answer within 20 days of receipt of the Notice is deemed to be a waiver of the right to appear and a consent to the entry of an order granting the relief sought by the Notice. Section 308.20 provides that a Notice of disapproval of a change in bank control under section 7(j) of the Act, as well as a Notice of Assessment of Civil Money Penalties under sections 8(i) and 18(j) of the Act, requires that both a request for a hearing and an answer be filed. Unless both a request for a hearing and an answer are filed, said Notices automatically become final and unappealable, pursuant to § 308.21(d)(1). In all other proceedings governed by subpart B, the Executive Secretary, upon the written request of FDIC enforcement counsel, may enter a default order when a Respondent has failed to timely file an answer.

Occasionally it is necessary for a Notice or answer to be amended or supplemented. Section 308.22(a), "Amended Pleadings," allows for the Notice or answer to be amended or supplemented upon good cause shown, and by leave of the administrative law judge. In the case of an amended Notice, the Respondent must answer in the time remaining for Respondent's answer to the original Notice or within 10 days after service of the amended Notice, whichever is later.

As provided in § 308.22(b), "Amendments to Conform to the Evidence," amendments to the Notice and answer are not required when issues not raised by the Notice or answer are tried by express or implied consent of the parties. If, at the hearing, evidence is objected to on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge has the discretion to allow the Notice or answer to be amended when the presentation of the merits of the case will be served and the administrative law judge is convinced that the admission of such evidence would not unfairly prejudice the objecting party's action or defense. The administrative law judge may grant a continuance, if justice requires, to enable the objecting party to meet such evidence.

[1] If the hearing is scheduled to be held within 60 days after service of the Notice, all time periods beginning with the pre-trial exchange of proposals and drafts are to be reduced by 60 days.

Section 308.23, "Intervention; Persons Having Official Interest," gives the administrative law judge discretion to allow a person to intervene for limited or all purposes. Section 308.23(a) sets forth a three-pronged test that must be met before a person may be allowed to intervene. An intervenor is not allowed to appear through any attorney or law firm representing any Respondent in the action.

Section 308.23(b) acknowledges that a person may have an official interest in a proceeding without the necessity of becoming an intervenor. Examples of persons who may have an official interest are the bank, when not a Respondent or intervenor, other federal banking regulators, appropriate state banking agencies, and other interested governmental agencies. Persons having an official interest may, at the discretion of the administrative law judge, attend the hearing, be served with papers, and submit amicus curiae briefs within the same time periods as the parties.

Section 308.24, "Consolidation and Severance of Actions," addresses circumstances that arise both when more than one action is taken against a Respondent (paragraph (a)(1)) and when similar actions are brought against several Respondents (paragraph (a)(2)). In such situations, consolidation generally should take place unless it would cause unreasonable delay or injustice.

Section 308.24(b) provides that a proceeding involving two or more Respondents may be severed on the motion of any party or on the administrative law judge's own motion. Severance may be appropriate if the proceeding against one or more Respondents is being stayed, if severance would promote the prompt resolution of the proceeding, or if severance is otherwise required to prevent injustice.

3. Discovery (§§ 308.25–.29)

Section 308.25 provides for limited discovery. Paragraph (a) states that discovery may be obtained only through production of documents, and through no other means. Relevant documents may be obtained in discovery, as well as documents that may be inadmissible at the hearing but which appear reasonably calculated to lead to the discovery of admissible evidence. *See* § 308.25(b). However, as provided in § 308.25(c), privileged documents are not discoverable.

Section 308.26, "Time Limits for Discovery," provides that all initial requests for discovery must be made within 40 days after the Respondent receives the Notice. An exception to the 40-day period is made in § 308.26(a)(2) for "follow up" discovery requests; that is, if a discovery request is based upon or otherwise follows up on an earlier discovery response, a follow up request may be served within ten days after service of the response upon which it is based. If an extension is granted to permit a Respondent to file a late answer, FDIC enforcement counsel are given ten days following the late answer to serve discovery requests on that party. The time to file discovery requests is similarly extended until ten days after the answer is filed if the FDIC amends the Notice and an answer is required.

The procedure to be used for document discovery from parties is described in § 308.27. It is basically a "notice" procedure similar to that used under the Federal Rules of Civil Procedure. It is a departure from the procedure found in the present regulations which requires a party seeking documents from another party to file with the administrative law judge an application for a subpoena. Under § 308.27 of the proposed regulations, any party may serve on any other party a request to produce documents.

Unless the parties agree to other arrangements, the party to whom a document request is made shall bear the cost of copying documents if they are asked to copy no more than 250 pages. If more than 250 pages of copying is requested, the cost of copying (at $.20 per page) and shipping shall be borne by the requesting party. *See* § 308.27(b). Certain updating of responses to discovery requests is required by § 308.27(c).

Section 308.27(d) sets forth procedures to be followed when the party upon whom a document request is served objects to any portion, or all, of the document request. Section 308.27(d)(4) provides that a general objection to all or virtually all of a document request shall, unless there is substantial justification for such a general objection, be stricken. Paragraph (f) sets forth the procedure and timetable to be followed in discovery disputes, including moving for an order or subpoena requiring production. Paragraph (g) provides for discovery conferences to resolve discovery disputes. Finally, § 308.27(i) reiterates the authority of an appropriate United States district court, pursuant to 12 U.S.C. 1818(n), to issue an order requiring compliance with a subpoena issued by an administrative law judge.

Obtaining documents from a non-party continues to require a document subpoena. Section 308.28 provides for the issuance of a third-party document subpoena by the administrative law judge, upon receipt of an application containing a brief statement of the reasons for its issuance. If compliance with a subpoena is ordered by the administrative law judge, but refused, the subpoenaing party may apply to the appropriate United States district court for an order compelling compliance.

Section 308.29, "Depositions of Witnesses Unavailable for Hearing," states that the administrative law judge may issue a subpoena requiring the attendance of a witness at a deposition only upon a showing by the requesting party that the witness will be unavailable for the hearing, that the witness' unavailability was not caused by the subpoenaing party, that the witness' testimony will be material, and that taking the deposition will not result in an undue burden or delay. In the event of noncompliance, the subpoenaing party or other aggrieved party may apply to an appropriate United States district court for an order requiring compliance.

4. Motions (§§ 308.30–.31)

Section 308.30 applies to all motions except discovery motions. Unless made during a pre-trial conference or a hearing, applications for orders must be made by written motion, and must be accompanied by a statement of the relief or order sought. A period of 10 days is allowed for filing a written response, including a proposed order. If a written response to a motion is filed and it raises new issues or arguments, the moving party has 5 days in which to reply, with such reply limited to the new issues or arguments raised in the response.

Section 308.30(d) requires that a good faith attempt to resolve disputes must be made before a motion may be filed under this section. Counsel for the moving party (or the moving party, if not represented by counsel) must certify that he or she has met in person or by telephone with opposing counsel in an effort to resolve the dispute (or that opposing counsel refused to discuss the matter) before a motion may be filed. However, this good faith requirement does not apply to motions that would substantially dispose of the case, such as motions for summary judgment or motions to dismiss.

The ruling of an administrative law judge on a motion may not be appealed to the Board prior to the Board's consideration of the administrative law judge's recommended decision on the entire case, unless the Board grants special permission to appeal, pursuant to § 308.31, "Interlocutory Appeals to

the Board." In addition to setting forth the procedure to be followed in an interlocutory appeal, § 308.31(c) makes clear that such an appeal shall not stay the proceedings before the administrative law judge. However, the administrative law judge or the Board may grant a stay upon a showing that the aggrieved party has a substantial likelihood of success on the merits and that hardship or injustice will result if a stay is not granted.

5. Prehearing Procedures and Conferences (§§ 308.32–.33)

"Prehearing Procedures and Conferences," including section 308.32, "General Procedures," and § 308.33, "Prehearing Submissions and Conference," are intended to: provide continuous control over an action so that the action will not become protracted, discourage wasteful pretrial activities, result in orderly and expeditious preparation of a case for a hearing, avoid unnecessarily lengthy hearings, and assure that a party who complies with the requirements of subpart B and with the orders of the administrative law judge will not be unfairly prejudiced by the failure of any other party to comply with such regulations and orders.

The hearing date establishes the timeframe for making prehearing submissions and taking other prehearing actions as required or allowed by § 308.33. The date of the hearing will ordinarily be 120 days after receipt of the Notice, except in proceedings under 12 U.S.C. 1818(b) and 1818(e) where the 60-day period has not been waived or extended pursuant to § 308.34(a)(2).

Section 308.33 governs prehearing submissions and conferences. Section (b) provides that not less than thirty-five days before the hearing date, each party shall serve on every other party a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and a proposed witness list, including a short summary of the expected testimony of each witness. Counsel for all parties and any unrepresented parties shall then meet and attempt to agree upon a joint statement of the issues, stipulations, and admissibility of proposed trial exhibits (or a stipulation that proposed trial exhibits are authentic). This meeting must be held sufficiently in advance of the fifteenth day before the hearing so that on the fifteenth day before the hearing the parties can file with the administrative law judge a joint statement of the issues for hearing and stipulations. If a single statement of the issues cannot be agreed upon, each party shall file its own statement of issues. Further, on the fifteenth day before the hearing, each party shall file its pre-marked trial exhibits, together with any stipulations concerning their admissibility or authenticity, and that party's witness list. Pre-hearing briefs may also be filed by any party on the fifteenth day before the hearing is to begin.

Section 308.33(e) expressly authorizes a final prehearing conference to be held close to the time of the hearing. If a conference is called in accordance with § 308.33(e), such conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties. By dictation on the record at the conference, or by written memorandum or order within a reasonable time following the conclusion of the conference, the administrative law judge shall set forth the agreements reached and determinations made at the pre-hearing conference.

Section 308.33(f) sets forth limitations on any party who fails to exchange proposed exhibits or a witness list as required by section (b) or fails to file exhibits or a witness list as required by section (c). Such parties forfeit their right to introduce any exhibits and/or call any witness at the hearing during their case-in-chief. Failure to timely file a pre-hearing brief operates as a waiver of the right to file such a brief.

Should any party fail to exchange or file documents required under sections (b) or (c), namely, exchanging and/or filing a proposed statement of the issues, proposed stipulations, proposed trial exhibits, and proposed witness lists, the administrative law judge or any other party may require that such party state in writing, within five days of receipt of the request, whether that party will appear at the hearing and defend the case on the merits. Failure of the party to respond by filing a timely and express written statement that the party will appear at the hearing and defend on the merits shall be deemed a waiver of that party's right to a hearing, and a default order may be entered by the Executive Secretary. Finally, if any party fails to comply fully and in good faith with the requirements of section 308.33, the administrative law judge, on the motion of any party or on his or her own motion, may impose appropriate sanctions authorized in § 308.49, in addition to enforcing the specific limitations set forth in § 308.33.

6. Hearings (§§ 308.34–.38)

As discussed above, § 308.34 sets out the time period for commencement of hearings under this part. Generally, hearings are to be commenced 120 days after service of the Notice. This time period may be extended if the administrative law judge makes a finding, on the record, that good cause is shown for continuing the matter. No hearing is to be continued to a date more than 150 days after service of the Notice except upon a finding, on the record, of impracticality, or a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer (*see* § 308.15), a need to stay the proceeding pending a final Board decision on an interlocutory appeal (*see* 308.31), or that the ends of justice require a continuance.

Actions under 12 U.S.C. 1818(b) and 1818(e) may not be continued beyond 60 days after service of the Notice over the objection of any party, unless the administrative law judge makes a finding on the record that commencing a hearing within this time period is impractical, would materially and unfairly prejudice one or more parties, or would otherwise be unjust.

A party's failure to appear at a hearing personally or by an authorized representative is deemed a waiver of the right to appear and results in the entry of an order of default, as provided in § 308.21.

Section 308.35, "Hearing Subpoenas," provides that a party who intends to call a person as a witness may apply to the administrative law judge for a hearing subpoena requiring the witness to appear at the hearing. The party obtaining the hearing subpoena is responsible for serving it on the witness and on all other parties. Objections may be made to the hearing subpoena either by the person named therein or by any party. A hearing subpoena duces tecum addressed to a party shall not be issued by the administrative law judge unless he or she finds that either the subpoenaing party could not have reasonably anticipated the need for the subpoenaed documents during the discovery period (see § 308.26) or the subpoenaed documents were requested previously by document request, and the relevant portion of the document request was not quashed by the administrative law judge.

Section 308.36, "Conduct of Hearings," authorizes the administrative law judge to exercise control over the hearing. As is true in the present regulations, § 308.36 provides that FDIC enforcement counsel shall present their case-in-chief first. Additionally, at the beginning of the hearing, unless otherwise ordered by the administrative law judge, all stipulations of fact and law filed 15 days prior to the commencement of the

hearing shall automatically be admitted into evidence. Documents, the admissibility of which has been previously stipulated to, shall also be automatically admitted into evidence.

Section 308.36(c) is based on Rule 611 of the Federal Rules of Evidence. Like Rule 611, this section limits cross-examination under most circumstances to the subject matter of that witness' direct examination and matters pertaining to the credibility of the witness. The administrative law judge may use his or her discretion to permit cross-examination into additional matters, but only under limited circumstances.

Rebuttal evidence may be presented in accordance with § 308.36(d), but shall be limited to material new issues or to new evidence concerning material disputes. The parties' presentation of rebuttal evidence shall be in the same order as their presentation of their cases-in-chief.

Section 308.37, "Written Testimony in Lieu of Oral Hearing," expressly authorizes hearings in which most, or all, of the direct testimony is present in written form. Section (a) provides that absent objection by a party, the administrative law judge may order that the parties present their cases-in-chief and rebuttal in the form of exhibits and written statements sworn to by the witness offering the evidence. Any such order shall also allow any party to call hostile witnesses or adverse parties to testify orally and shall give all parties a right of oral cross-examination.

Paragraph (c) of § 308.37 sets forth the limitations to be applied if a party fails to file written testimony. A failure to file written testimony is deemed to be a waiver of that party's right to present any evidence, except the testimony of a previously identified adverse party or hostile witness. A party's right of cross-examination or right to present rebuttal evidence (if not required to be submitted in written form) is not waived by that party's failure to file written testimony.

Section 308.38, "Evidence," provides that non-repetitive evidence is admissible in accordance with the Administrative Procedure Act and other applicable laws. Further, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in a proceeding under subpart B.

Generally, to be admissible, evidence must concern acts occurring prior to the date of the Notice. In addition, upon motion and a finding on the record that the admission of evidence generally excluded by this section is necessary for the express and limited purpose of fashioning a remedy, the administrative law judge may determine to admit such evidence.

The rules of privilege applicable to discovery (*see* § 308.25) are applicable to hearings. Consistent with those rules, evidence which a party had previously withheld from discovery under a claim of privilege can be received at the hearing only upon a finding by the administrative law judge that the exclusion of such evidence would result in manifest injustice. The admission of such evidence may be conditioned on terms that the administrative law judge deems are just to all parties.

Section 308.38(c) allows the administrative law judge to take official notice of any material fact which might be judicially noticed by a United States district court and any material information in the official public records of the FDIC. Upon timely request, the parties are afforded an opportunity to dispute any fact officially noticed or requested to be noticed under this section.

Section 308.38(d) provides: (1) That a duplicate copy of a document is admissible to the same extent as the original, unless there is a genuine issue as to whether the copy, in some material respect, is not a true and legible copy of the original; (2) that FDIC examination and visitation reports are admissible with or without a sponsoring witness; and (3) that witnesses may use illustrative or summary charts, exhibits, calendars, calculations, or outlines during their testimony, with the administrative law judge having discretion concerning the admission of such documents into evidence.

According to § 308.38(e), if a witness who has been deposed under § 308.29 is unavailable to testify at the hearing, all or part of that witness's deposition transcript, including exhibits, may be introduced into evidence. Generally, the deposition transcript is admissible to the same extent that the testimony would have been. If a witness refused to answer proper questions during the deposition, the administrative law judge may limit the admissibility of the deposition as justive requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

Section 308.38(f) requires that objections to evidence be made timely and state the grounds relied upon. Debate concerning an objection is to be included in the transcript unless the administrative law judge, with the consent of the parties, orders otherwise, and rulings on objections are to be made on the record. Finally, failure to object is deemed a waiver of objection.

Section 308.38(f)(2) provides that when an objection to a question or a line of questioning is sustained, the examining attorney may make a proffer on the record of what was expected to be proven by the testimony of the witness. This can be done either by representation of counsel or by interrogation of the witness. Further, the administrative law judge is required to retain rejected exhibits, marked for identification, and transmit them to the Executive Secretary pursuant to § 308.40.

7. Post-Hearing Proceedings (§§ 308.39–.42)

Section 308.39, "Post-Hearing Papers," provides that within 30 days after the hearing transcript is delivered to all parties or is filed, whichever is earlier, each party who participated in the hearing shall file proposed findings of fact with specific page references to the record to support those proposed findings, proposed conclusions of law, and a proposed order. At that time, a post-hearing brief may also be filed by any party.

A reply brief may be filed within 15 days after the date that the proposed findings, conclusions, and orders are due. This brief is restricted to responding to new matters, issues, or arguments raised by another party. If a party failed to file proposed findings of fact, conclusions of law, and a post-hearing brief, that party is not permitted to file a reply brief. Thus, while the filing of a post-hearing brief is optional, it is a condition of being permitted to file a reply brief.

Section 308.40, "Recommended Decision and Filing of Record," directs the administrative law judge to file with the Executive Secretary the record of the proceeding within 50 days after the date for the parties' filing of proposed findings, conclusions, and orders under § 308.39(a). The record of the proceeding shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order, as well as all pre-hearing, hearing, and post-hearing exhibits, memoranda, motions, transcripts, and the like. If requested by any party, the hearing record shall also include any profferred evidence which was excluded. Upon filing with the Executive Secretary, the administrative law judge is to serve upon each party a copy of the recommended decision, findings of fact, conclusions of law, and proposed order.

Section 308.41, "Exceptions to Recommended Decision," states that a party to the proceeding may file with the

Executive Secretary written exceptions to the administrative law judge's decision, findings, conclusions, and proposed order, and a supporting brief, within twenty days after service of the administrative law judge's decision. Exceptions may be taken to the administrative law judge's failure to make any recommendation for relief, finding, or conclusion, to the admission or exclusion of evidence, and to any other ruling. Exceptions are to include page and paragraph references to the record, or legal citations, which support each exception. A request for oral argument may also be filed. *See* § 308.43(a). Exceptions and briefs not filed within the 20-day time period will normally not be accepted. As provided in § 308.41(c), no replies to exceptions shall be filed unless the Board, on its own motion, requests them.

Section 308.42, "Notice of Submission to the Board," states that after the administrative law judge has filed the record of the proceeding with the Executive Secretary pursuant to section 308.40, and the time period for filing exceptions has expired, the Executive Secretary shall submit the official record of the action to the Board, and shall notify the parties of such submission.

8. Board Action (§§ 308.43–.44)

Pursuant to § 308.43(a), the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommended decision of the administrative law judge, or on any issue raised in the proceeding. Written requests for oral argument must be made within the time prescribed for filing exceptions under § 308.41. If the Board requires oral argument, it may set aside the notice of submission of the record.

Oral arguments shall be made before one or more members of the Board, and shall be recorded, as specified in § 308.43(b). Unless the Board orders otherwise, oral arguments will be limited to 40 minutes. The FDIC enforcement counsel will open oral argument and may reserve up to one-half of their time for reply.

Section 308.44, "Decision by the Board," provides that after the Executive Secretary has submitted the record of the proceeding to the Board, a decision is to be issued within 90 days. However, within this 90-day period the Board may remand the case to the administrative law judge. The provisions of §§ 308.43 and 308.44 shall apply to the remanded proceedings, unless otherwise ordered by the Board or the administrative law judge. The 90-day period will begin anew when the record is resubmitted to the Board upon completion of the proceedings on remand. Further, if oral argument has been ordered, the Board shall issue a decision by the later of 30 days from the date of the oral argument or the expiration of the original 90-day period. Finally, §308.44(b) permits a party to seek reconsideration within fifteen days from the date of the issuance of a Board decision and order.

Section 308.44 of the revised regulation is comparable to § 308.18(b) of the current regulation in providing that members of the FDIC staff who have not participated in the investigatory or prosecutorial functions, or in a factually related case, may advise and assist the Board in its consideration of the case.

Finally, § 308.44(c) provides that the Executive Secretary will serve copies of the Board's decision and order on the parties and on the bank concerned. Copies will also be furnished to appropriate state or federal supervisory authorities.

9. Stays (§§ 308.45–.46)

Section 308.45, "Stays Pending Appeal," provides that commencement of proceedings for judicial review of a decision and order of the Board shall not operate as a stay of the order, unless a stay is specifically ordered by the Board or by the court.

Section 308.46, "Collateral Attacks on Administrative Proceedings," provides that if an interlocutory appeal or collateral attack on an administrative proceeding governed by subpart B is brought in any court, the challenged administrative proceeding is to continue without regard to the pendency of the court proceeding. Further, no default or other failure to act at the administrative level is to be excused based on the pendency of any such interlocutory appeal or collateral attack.

10. Conflicts of Interest and Sanctions (§§ 308.47–.50)

Section 308.47 is new to revised Part 308 and addresses the recurring problem of conflicts of interest. Paragraph (a) of § 308.47 states the general rule that no attorney, law firm, or other person acting in a representative capacity shall represent two or more persons when one or more of them is a party to a proceeding under subpart B and there is a material and actual conflict of interest between or among the persons represented as to any matter relating directly or indirectly to the proceeding. Further, no attorney, law firm, or other person acting in a representative capacity may represent two or more parties to a proceeding under subpart B, or a party and a bank to which notice of a subpart B proceeding has been given, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08: (1) That the attorney has personally and fully discussed the possibility of conflicts of interest with each represented party or bank; (2) that each party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its interest and the interest of others represented by the same attorney or law firm; and (3) that each party or bank waives any right it might otherwise have had during the course of the proceeding, including any appeal, to assert any known or non-material conflict of interest. These conditions precedent to an attorney's or law firm's multiple representation are set forth in § 308.47(b).

Section 308.47(c) authorizes the administrative law judge, at any stage of a proceeding under subpart B, to take measures to cure a conflict of interest, including issuance of an order to disqualify an individual or firm from representing one or more of the participants in a proceeding.

Under the existing regulation, "ex parte communication" is defined in § 308.48(a), and the prohibition against, and sanctions based upon, such communications are set forth in § 308.48(e). In the revised regulation, the definition, prohibitions, and sanctions are all located in § 308.48, "Ex Parte Communications." Ex parte communications include any material communication, made orally or in writing, which were neither on the record nor on reasonable prior notice to all parties, between a party or other interested person and the administrative law judge, a member of the FDIC's Board, or any person assisting the Board or the administrative law judge in preparing a decision. Section 308.48(b) states that from the time the Notice is served, no person shall make or knowingly cause to be made an ex parte communication concerning the proceeding. Requests for status reports are not ex parte communications.

Absent giving all parties notice and an opportunity to participate, the administrative law judge shall not consult with anyone within the FDIC on any matter in issue, except that the administrative law judge may consult with the Office of the Executive Secretary concerning procedural matters. This limited exception to the general prohibition is made explicit in § 308.48(c).

Section 308.48(d) sets forth the procedure to be followed when an ex

parte communication nonetheless occurs. It provides that all such written communications, or, if the ex parte communication was oral, a memorandum setting forth the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

If the prohibition against ex parte communication in § 308.48 is knowingly violated by a party, such violation may be a ground for sanctions, including a decision adverse to the party, if justice and the policies of the Act would be served by such an action. Further, ex parte communications engaged in by an attorney may be sanctioned under § 308.50.

Section 308.49, "Sanctions," is included in revised subpart B to make clear that administrative law judges and the Board have authority to effectively deal with the significant problem of parties and their counsel failing to comply with the requirements of Part 308 and/or with orders. Under § 308.49(a), sanctions may be imposed when any counsel or party has acted in a manner contrary to any applicable statute, regulation, or order, and the party's or counsel's conduct is contemptuous or has materially injured or prejudiced some other party.

Sanctions imposed in accordance with § 308.49(b) may include one or more of the following: (1) Issuing an order against the party; (2) striking any testimony, rejecting any documentary evidence offered, or striking papers filed by the party; (3) precluding the party from contesting specific issues; (4) precluding the party from challenging certain evidence offered by another party; (5) refusing a late filing or conditioning acceptance of a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by the other party as a result of the offending party's improper action or inaction.

Under § 308.49(c), dismissal of an action as a sanction for the failure to hold a hearing within the time period specified in Part 308 or based upon the failure of an administrative law judge to render a recommended decision within the time period specified in Part 308 may only be granted if the delay is solely the result of the conduct of the FDIC enforcement counsel, that conduct is unexcused, the moving Respondent took all reasonable steps to oppose and prevent the delay, the Respondent has been materially prejudiced or injured, and no lesser or different sanction is adequate.

Paragraph (d) of section 308.49 sets out the general procedure for the imposition of sanctions. The administrative law judge may impose sanctions on his or her own motion or at the request of any party. Prior to their imposition, all sanctions, except the refusal to accept late papers, require notice to the parties and opportunity for counsel or the party against whom sanctions would be imposed to be heard. The form that the opportunity to be heard shall take is largely left to the discretion of the administrative law judge. For example, the opportunity to be heard may be limited to an oral response immediately after the violative action or inaction is noted by the administrative law judge. Requests for, and the imposition of, sanctions are to be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge, *i.e.*, in accordance with § 308.31.

Section 308.50, "Suspension and Disbarment," is a considerable expansion of § 308.04(b) of the existing regulations, which authorizes summary suspension from practice in a particular FDIC matter based upon contemptuous conduct in that matter. Section 308.50 of the proposed regulations provides for mandatory and automatic suspension and disbarment of attorneys under certain circumstances and gives the Board discretion to suspend and disbar under other circumstances.

Under § 308.50(a), the Board has the power to suspend or revoke an attorney's privilege of practicing before the FDIC based not only on the Board finding that the attorney engaged in contemptuous conduct before the agency, but also upon a finding that the attorney does not possess the requisite qualifications to represent others, is seriously lacking in integrity or has engaged in material unethical or improper professional conduct, or has engaged in or aided another in engaging in a material and knowing violation of the Federal Deposit Insurance Act. The Board may suspend or revoke the privilege to practice before the FDIC on these grounds only after notice of and opportunity for a hearing.

Once suspended or disbarred from practice before the FDIC by the Board pursuant to § 308.50(a), an attorney may not make an application for reinstatement for at least three years, and thereafter, may make a new request for reinstatement no sooner than one year after the attorney's most recent reinstatement application. An attorney may be reinstated by the Board for good cause shown.

Under § 308.50(b) an attorney is automatically suspended or disbarred if he or she is suspended or disbarred by any court of the United States or by the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission. A person who has within the past 10 years been convicted of a felony, or of a misdemeanor involving moral turpitude, is also automatically suspended from practicing before the FDIC.

Reinstatement after a suspension or disbarment under § 308.50(b) may be made by the Executive Secretary if all grounds for suspension are subsequently removed by a reversal of the conviction or termination of the underlying suspension or disbarment. An application for reinstatement under § 308.50(b) on any other grounds may be filed at any time not less than one year after the applicant's most recent application. Until the Board has reinstated the applicant for good cause shown, the suspension shall continue.

An applicant for reinstatement under either the discretionary or mandatory suspension and disbarment provisions may, in the Board's sole discretion, be afforded a hearing. Hearings conducted pursuant to this section shall be handled in the same manner as other hearings under this subpart B, except that in proceedings to terminate an existing FDIC suspension or disbarment order, the person seeking the termination shall bear the burden of going forward with the application and with proof, and provided that the Board may limit any such hearings to written submissions.

Finally, § 308.50(d) of the proposed regulations largely mirrors § 308.04(b) of the current regulation by providing that any attorney or representative found in contempt by the administrative law judge may be summarily suspended from participation in that proceeding.

*C. Subparts C–P*

Subparts C–P contain rules and procedures that govern specific types of formal and informal proceedings conducted by the FDIC. Generally, revisions made to these subparts are either clarifying in nature or were made to conform the subparts to, or avoid overlaps with, subpart B.

1. Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control (§§ 308.51–308.54)

New subpart C replaces old subpart I and governs proceedings in connection with the disapproval of a proposed acquisition of control of an insured nonmember bank. The changes made to subpart C generally were made to make

this subpart consistent with revised subpart B.

Since new § 308.51 states that the rules and procedures of subpart B shall apply to all proceedings under this subpart, the requirements contained in old § 308.77 have been dropped as being redundant. New § 308.53 is a combination of old §§ 308.75 and 308.76. Section 308.53(b) is taken from old § 308.75(d). New § 308.54 replaces old § 308.76 and redesignates "exceptions" as "answer" in order to be consistent with the terminology used in subpart B.

2. Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessments of Civil Penalties for Willful Violations of the Change in Bank Control Act (§§ 308.55–308.57)

New subpart D replaces old subpart J and governs proceedings relating to assessments of civil penalties for willful violations of the Change in Bank Control Act. Redundant sections have been deleted (old §§ 308.80 and 308.81) and other sections (old §§ 308.79 and 308.82) have been condensed into new § 308.56.

3. Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status (§§ 308.58–308.63)

New subpart E replaces old subpart C and governs proceedings for the involuntary termination of insured status. A major change from old subpart C is that the full APA hearing procedure of subpart B will no longer apply to proceedings for the termination of deposit insurance under section 8(p) of the Act, *i.e.*, for failure to receive deposits. Under existing regulations, a bank is entitled to receive a full APA hearing prior to the termination of insured status. Section 8(p) of the Act does not require such a hearing process, and the FDIC's experience with section 8(p) terminations indicates that they can be properly handled using informal procedures.

The structure of this subpart has been changed somewhat for clarification purposes. The existing provisions concerning grounds for termination under section 8(a) of the Act (old §§ 308.24–308.26) have been consolidated into one section *i.e.*, new § 308.54. Old §§ 308.27(b), 308.78 and 308.29 have been deleted since they reiterate provisions contained in new subpart B.

4. Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders (§§ 308.64–308.68)

New subpart F replaces old subpart D and governs proceedings relating to cease-and-desist orders. The changes in subpart F were made for purposes of clarity. The existing provisions regarding grounds for the issuance of a Notice (old §§ 308.33 and 308.38) have been consolidated into one section, *i.e.*, new § 308.65. Old §§ 308.35 and 308.36(a) have been deleted since the provisions contained in these sections are found in new subpart B.

5. Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders (§§ 308.69–308.73)

New subpart G replaces old subpart E and governs proceedings relating to removal, prohibition and suspension orders. Only minor changes have been made to subpart G in order to clarify these rules and procedures. Old §§ 308.44–308.45, which pertain to temporary suspension orders, have been consolidated into one section, new § 308.73. Old § 308.42 has been deleted, since the provisions contained in that section are found in new subpart B.

6. Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes (§§ 308.74–308.76)

New subpart H modifies old subpart H and governs proceedings relating to assessment and collection of civil money penalties for the violation of cease-and-desist orders and of certain federal statutes. Several sections of old subpart H (old §§ 308.69–308.71 have been deleted as being redundant with provisions of subpart B. Old §§ 308.65–308.67 have been deleted as being redundant in light of the modifications made to the new "Scope" section, § 308.74.

7. Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents (§ 308.77–308.80)

New subpart I replaces old subpart K and governs procedures for the imposition of sanctions upon municipal securities dealers or persons associated with them and clearing agencies or transfer agents. There have been minor modifications in structure (compare old § 308.85 with new § 308.78), and old §§ 308.87 and 308.88 have been deleted as being redundant with provisions in new subpart B.

8. Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934 (§§ 308.81–308.86)

New subpart J replaces old subpart L and governs exemption proceedings under section 12(h) of the Securities Exchange Act of 1934. There have been minor structural changes in order to clarify this subpart. It should be noted that under new § 308.85(b)(2), the presiding officer will now have the discretion to order the swearing of any witness in an exemption proceeding.

9. Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act (§§ 308.87–308.93)

New subpart K replaces old subpart F and governs procedures applicable to investigations pursuant to section 10(c) of the Act. The changes noted below are designed to spell out the scope of the FDIC's authority under 10(c) of the Act to conduct investigations of both open and failed insured banks, institutions making applications to become insured banks, and any other types of investigations. The changes also make more specific certain of the procedures to be used during such investigations.

Section 308.87, "Scope," has been revised to spell out that the FDIC's investigatory power under section 10(c) of the Act extends to both open and failed insured banks.

Under § 308.88, "Order to conduct investigation", the Director of the Division of Liquidation, or designee thereof, has been added to the list of people authorized to open 10(c) investigations. This section has been further modified to require that the order of investigation indicate the purpose of the investigation and that the persons who authorized the investigation terminate it upon completion.

Consistent with the changes made in subpart B regarding sanctions, § 308.89, "Powers of Person Conducting Investigation," has been revised to spell out the Board's authority to summarily suspend for contemptuous conduct any attorney representing a witness during the investigation. This section also has made explicit that the person conducting the investigation may obtain assistance from others both within and outside the FDIC.

Section 308.91, "Rights of Witnesses", has been revised to spell out that a witness is to be furnished with a copy of the order of investigation if the witness so requests. Consistent with the changes made in subpart B regarding conflicts of interest and sanctions, authority is given to the person conducting the

investigation to order compliance with the same conflict of interest provisions found in § 308.47(b) of subpart B.

Old § 308.51(d) has been deleted. Our experience is that rather than producing useful rebuttal information, as had been hoped, the primary products of this paragraph have been pointless delays and arguments. In short, this provision has proved to be confusing and unworkable, and has often resulted in considerable delays with little or no benefit to the decision-making process. The deletion of this provision, of course, does not preclude the person conducting the investigation from nonetheless using his or her discretion to seek out evidence or testimony rebutting or otherwise relating to any apparent wrongdoing.

Section 308.93, "Transcripts." Paragraph (b), concerning subscription by witness, is a new provision and was added in order to reduce challenges to the completeness or accuracy of deposition transcripts if the transcripts are used in subsequent proceedings.

10. Subpart L—[Reserved]

11. Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the Act (§§ 308.99–308.103)

New subpart M governs proceedings for applications under section 19 of the Act. The purpose of putting procedures relating to applications under section 19 of the Act in a separate subpart is to clarify the differences between this type of proceeding and that under section 8(g) of the Act.

Subpart M permits the filing of an application not less than three years after the effective date of the conviction for a criminal offense involving dishonesty or breach of trust. After the initial application, the applicant may apply no sooner than one year from the date of the last denial of his application. Considerations relevant to an application under section 19 have been amplified in § 308.100. Further, under § 308.103 an applicant is given an opportunity for an oral hearing should the Board of Directors or its designee, in its sole discretion, make such a determination. The hearing is conceived as an informal proceeding where a presiding officer determines whether to allow the presentation of witnesses. No discovery is permitted; however, an applicant may introduce relevant and material documents on the record.

12. Subpart N—Rules and Procedures Applicable to Proceeding Relating to Suspension, Removal, and Prohibition Where a Felony is Charged

New subpart N governs proceedings for suspension, removal, and prohibition pursuant to section 8(g) of the Act where a felony is charged. As with proceedings under section 19, the purpose of providing for procedures relating to section 8(g) actions in a separate subpart is to clarify the differences between this type of proceeding and that under section 19 of the Act. In addition to structural changes made in this subpart, old §§ 308.60–308.61 have been consolidated into new § 308.107. Paragraph (b)(4) of § 308.107 has been added in order to make clear that there is no discovery in proceedings conducted under this subpart. Paragraph (b)(9) of § 308.107 is also new and was added to make the procedures under this subpart consistent with other proceedings in which a presiding officer makes recommended decisions to the Board.

13. Subpart O—Reserved

14. Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses (§§ 308.113–308.127)

New subpart P modifies old subpart M and governs proceedings relating to the recovery of attorney fees and other expenses under the Equal Access to Justice Act, 5 U.S.C. 504. The revisions to this subpart are minor. For example, §§ 308.114 and 308.115 were moved closer to the beginning of the subpart, and new §§ 308.114, 308.115, 308.116(c), and 308.121 rearrange provisions found in existing sections of subpart M (old §§ 308.104, 308.105, 308.97, and 308.102). Paragraph (c) of new § 308.115 is derived from old § 308.106, and new § 308.123 is derived from old § 308.106(b).

The scope of subpart P, new § 308.113, has been changed to reflect amendments made by Congress when the Equal Access to Justice Act was re-enacted in 1985. (*See* Pub. L. 99–80, 99 Stat. 183). The types of eligible applicants under new § 308.101(b), has also been modified for consistency with the 1985 amendments.

**Regulatory Factors**

Part 308 was selected for review under FDIC's Regulation Review Program (*see* 50 FR 14247, April 11, 1985). This revised Part 308 is a result of the review conducted.

The collections of information imposed by this Part 308 are a consequence of and are related to the administrative enforcement actions and proceedings conducted by the FDIC against specific individuals or entities. According to the Paperwork Reduction Act (44 U.S.C. 3518(c)(1)(B)), these collections are not subject to OMB review.

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) the Board of Directors hereby certifies that this revised Part 308 will not have a significant economic impact on a substantial number of small entities. The purpose of this revised regulation is to secure a just and orderly determination of administrative proceedings before the FDIC.

**List of Subjects in 12 CFR Part 308**

Administrative practice and procedure, Claims, Courts, Equal access to justice, Lawyers, Penalties.

For the reasons set out in the preamble, Title 12, Part 308 of the Code of Federal Regulations is revised as follows:

## PART 308—RULES OF PRACTICE AND PROCEDURES

**Subpart A—Definitions and General Provisions**



**Subpart B—Rules of Practice**

**Authority:** Sec. 2(9), Pub. L. No. 797, 64 Stat. 881 (12 U.S.C. 1819); Sec. 18, Pub. L. No. 94–29, 89 Stat. 155 (15 U.S.C. 78w); sec. 801, Pub. L. No. 95–630, 92 Stat. 3641 (12 U.S.C. 1972); sec. 203, Pub. L. No. 96–481, 94 Stat. 2325 (5 U.S.C. 504).

## Subpart A—Definitions and General Provisions

### § 308.01 Definitions.

For purposes of this Part 308, unless explicitly stated to the contrary:

(a) "Act" means the Federal Deposit Insurance Act, as amended, 12 U.S.C. 1811–31;

(b) "Board of Directors" or "Board" Means the Board of Directors of the Federal Deposit Insurance Corporation;

(c) Board's "designee" means officers or officials of the FDIC acting pursuant to authority delegated by the Board of Directors as provided in 12 CFR Part 303 or by specific resolution of the Board of Directors;

(d) "Executive Secretary" means the Executive Secretary of the FDIC or his or her designee;

(e) "FDIC" means the Federal Deposit Insurance Corporation;

(f) "Foreign bank" means any company which engages in the business of banking and which is organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, or the Virgin Islands. "Foreign bank" includes, without limitation, foreign commercial banks, foreign merchant banks, and other institutions which engage in usual banking activities in connection with the business of banking in the countries where such foreign institutions are organized or operating;

(g) "Insured bank" means any bank or banking institution (including a savings bank and a foreign bank having an insured branch) any deposits of which are insured in accordance with the Act;

(h) "Insured branch" means a branch of a foreign bank any deposits of which are insured in accordance with the Act;

(i) "Insured nonmember bank" means any insured bank which is not a national bank, a District bank, a member of the Federal Reserve System, or a Federal savings bank;

(j) "Notice" means the entire document issued by the Board of Directors or its designee which is served upon a party and which initiates a proceeding conducted under this part. The Notice sets forth the charges, a statement of facts underlying the charges, and the proposed relief including a proposed order, if any;

(k) "Official" means any director, trustee, officer, employee, or agent of a bank to which reference is being made, or any other person participating in the conduct of the affairs of a bank;

(l) "Party" means, a person named or admitted as a party for some or all purposes;

(m) "Person" means an individual or a corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization, agency, or any other entity; and

(n) "Respondent" means any person against whom the FDIC seeks relief in the Notice.

**§ 308.02 Rules of construction.**

For purposes of this Part 308: (a) any use of a term in the singular shall include the plural, and the plural shall include the singular, if such use would be appropriate; (b) any use of a masculine, feminine, or neuter gender shall be read as encompassing all three, if such use would be appropriate; (c) any use of the term "attorney" or "counsel" shall be read to include a non-attorney representative; and (d) unless the context requires otherwise, a party's attorney of record, if any, may, on behalf of that party, take any action required to be taken by the party.

**§ 308.03 Transition rules.**

(a) *General rule.* (1) This revised Part 308 shall be applicable to any proceeding instituted or *application filed* after January 1, 1989, the effective date of this revised Part 308.

(2) The preexisting provisions of Part 308 shall be applicable to any proceeding instituted or *application filed* before January 1, 1989, the effective date of this revised Part 308, unless the parties, with the consent of the administrative law judge, agree that this revised Part 308 shall apply to the proceeding.

(b) *Guidance provided by revised Part 308.* In those proceedings in which revised Part 308 is not applicable, the Executive Secretary, administrative law judge, and Board or its designee may, unless fairness requires otherwise, look to revised Part 308 for guidance to the extent that revised Part 308 is not inconsistent with the express provisions of the preexisting Part 308.

## Subpart B—Rules of Practice

**§ 308.04 Scope.**

Except as otherwise specified in subparts C through I, this subpart B prescribes rules of practice and procedure to be followed in all hearings pursuant to the provisions of the Federal Deposit Insurance Act, and other applicable law, pertaining to:

(a) Disapproval of a proposed acquisition of control of an insured nonmenber bank (*see* 12 U.S.C. 1817(j));

(b) Assessment of civil money penalties based on violations of the Change in Bank Control Act (*see* 12 U.S.C. 1817(j)(16));

(c) Involuntary termination of the insured status of an insured bank (*see* 12 U.S.C. 1818(a));

(d) Issuance of cease-and-desist orders against any insured nonmember bank or its official (*see* 12 U.S.C. 1818(b));

(e) Removal from office or prohibition from further participation in the conduct of the affairs of an insured nonmember bank (*see* 12 U.S.C. 1818(e) (1), (2), (3) and (5));

(f) Assessment of civil money penalties against (1) an insured nonmember bank or its official for violation of a cease-and-desist order which has become final (*see* 12 U.S.C. 1818(i)(2)); or (2) an insured nonmember bank or its official for violation of (i) the provisions of sections 22(h), 23A, or 23B of the Federal Reserve Act (*see* 12 U.S.C. 375b, 371c, 371c–1) or (ii) the provisions of section 106(b)(2) of the Bank Holding Company Act Amendments of 1970 (*see* 12 U.S.C. 1972(2));

(g) Imposition of sanctions upon (1) any municipal securities dealer for which the FDIC is the appropriate regulatory agency; (2) any person associated or seeking to become associated with such a municipal securities dealer; or (3) any clearing agency or transfer agent for which the FDIC is the appropriate regulatory agency (except for hearings on postponement of registration by such clearing agency or transfer agent pending registration denial proceedings, and for hearings on suspension of registration by such clearing agency or transfer agent pending registration revocation proceedings) (*see* 15 U.S.C. 78o); and

(h) Any other types of FDIC hearings which are required by statute to be held on the record, and as to which neither the applicable statute nor other FDIC regulations set forth the procedures to be used in conducting the required hearing on the record.

**§ 308.05 Authority of Board and Executive Secretary.**

(a) *The Board.* (1) The Board may, at any time during the pendency of a proceeding, perform, direct the performance of, or waive performance of, any act which could be done or ordered by the Executive Secretary or the administrative law judge.

(2) Nothing contained in Part 308 shall be construed to limit the power of the board granted by applicable statutes or regulations.

(b) *The Executive Secretary.* When no administrative law judge has jurisdiction over a proceeding, the Executive Secretary may act in place of, and with the same authority as, an administrative law judge, except that the Executive Secretary may not hear a case on the merits or make a recommended decision on the merits to the Board.

**§ 308.06 Appointment of administrative law judges.**

(a) *Appointment.* Unless otherwise directed by the Board, a hearing within the scope of this subpart shall be held before an administrative law judge appointed by the United States Office of Personnel Management.

(b) *Procedures.* (1) The Executive Secretary may at any time after issuance of the Notice, and shall promptly after receipt of an answer, secure the appointment of an administrative law judge to hear the proceeding through the United States Office of Personnel Management.

(2) The Executive Secretary shall advise the parties, in writing, that an administrative law judge has been appointed.

(3) If, for any reason, an administrative law judge is unable to, or, for any reason, does not bring the proceeding on for hearing, render a recommended decision, or otherwise perform the duties of an administrative law judge as provided in this subpart, a successor administrative law judge may be requested and appointed. Such substitution shall not be a basis for delaying the proceeding, unless such delay is a practical necessity, or for reopening any matter previously decided, unless the ends of justice so require.

**§ 308.07 Powers of administrative law judges.**

(a) *General rule.* The administrative law judge shall conduct all proceedings governed by this subpart B in accordance with the provisions of the Administrative Procedure Act (5 U.S.C. §§ 554–557) and other applicable law.

The administrative law judge shall conduct the hearing in a fair and impartial manner and shall avoid unnecessary delay in the disposition of proceedings.

(b) *Powers.* The administrative law judge obtains jurisdiction over a proceeding upon appointment and retains that jurisdiction until such time as he or she submits a recommended decision to the Executive Secretary, resigns, or is removed or replaced. Further, the administrative law judge regains jurisdiction over a proceeding if the matter or any aspect thereof is remanded by the Board. In addition to all of the specific powers granted by applicable law and in this subpart B, the administrative law judge shall have all powers necessary to conduct the hearing including, without limitation, the power:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders and to revoke, quash, or modify any such subpoenas and orders;

(3) To hold conferences for settlement, for simplification of issues, or for any other proper purpose;

(4) To regulate the course of the hearing and the conduct of the parties and their counsel;

(5) To receive relevant evidence and rule upon the admission of evidence and offers of proof;

(6) To continue or adjourn a hearing from time to time and place to place, as permitted by law and this subpart B;

(7) To consider and rule upon procedural and other motions. The administrative law judge shall have the power to deny a motion for summary judgment, motion to dismiss, and any other dispositive motion properly brought before the administrative law judge; the administrative law judge may, however, only recommend to the Board a decision to grant a dispositive motion;

(8) To reopen the hearing record at any time prior to the transmission of the recommended decision to the Executive Secretary and to call for the production of further evidence, to permit oral argument, and to permit the submission of briefs; and

(9) To disqualify himself or herself upon motion made by a party or on his or her own motion.

**§ 308.08 Appearance before the FDIC.**

(a) *Qualification.* Subject to the conditions, limitations, and qualifications appearing in §§ 308.47 and 308.50:

(1) Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory, or the District of Columbia may represent others before the FDIC if such person is not currently suspended or disbarred from practice before the FDIC; and

(2) A member of a partnership may represent the partnership; a duly authorized officer of a corporation, trust, or association may represent the corporation, trust, or association; and an authorized officer or employee of any government unit, agency, or authority may represent that unit, agency, or authority, if such individual partner, officer, or employee is not currently suspended or disbarred from practice before the FDIC.

(b) *Authorization and notice of appearance.* Any attorney or non-attorney representative representing any Respondent under paragraph (a) of this section must file with the Executive Secretary, at or before the time that attorney or representative submits papers or otherwise appears on behalf of a party before the FDIC, a Notice of Appearance that includes a written declaration of current qualification to represent that Respondent before the FDIC and a statement of authorization to represent each party he or she is authorized to represent. The Notice of Appearance shall be accompanied by the certification required under § 308.47(b), if applicable.

(c) *Representatives of nonparties.* A nonparty, who has a right to be represented in any deposition or other proceeding under this subpart B, may be represented by any person qualified to represent a party before the FDIC. Anyone representing a nonparty in such a situation is not required to file a Notice of Appearance unless expressly ordered to do so, but any party or the administrative law judge may require that the attorney state either on the record or in writing the information required in a Notice of Appearance, and no attorney who refuses to provide that information shall be allowed to represent any person in the proceeding.

**§ 308.09 Short and plain statement required.**

Each pleading, motion, and other representation of record shall consist of a short and plain statement of

(a) the claim or position being advanced,

(b) the factual and legal bases for that claim or position, and

(c) the relief requested and the basis for granting such relief. Subject to the requirements of § 308.10, bases for a claim or position may be set forth hypothetically or in the alternative and are not required to be consistent. Relief in the alternative, or several different types of relief, may be requested.

**§ 308.10 Good faith certification.**

(a) *General requirement.* After the Board or its designee issues the Notice, every subsequent written presentation by a party represented by an attorney shall be signed by at least one attorney of record in his or her individual name and shall state that attorney's address and telephone number. A party who is not represented by an attorney shall sign his or her presentation of record and state his or her address and telephone number.

(b) *Effect of signature.* (1) The signature of an attorney or party constitutes a certification that the attorney or party read the written presentation of record; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the pleading, motion, or other presentation or record is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a written presentation of record is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any attorney or party constitutes a certification by him or her that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well grounded in fact and are warranted by existing law or a good-faith argument for the extension, modification, or reversal of existing law, and are not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(d) *Sanctions for violations.* If a pleading, motion, or other presentation is made in violation of this section, on the motion of any party or on his or her own motion, the administrative law judge may impose upon the attorney, the represented party, or both, any appropriate sanction authorized in §§ 308.49 and 308.50.

**§ 308.11 Maintenance of the record.**

(a) *Duties of the Executive Secretary.* (1) The Executive Secretary shall maintain the official record of all papers filed in each proceeding. For purposes of subpart B, the official record shall not include settlement offers and related papers, Board resolutions, internal staff

recommendations, and other deliberative-process memoranda.

(2) Upon appointment of the administrative law judge, the Executive Secretary shall forward to the administrative law judge a copy of the then existing official record of the proceeding.

(b) *Certification of record by administrative law judge.* The administrative law judge shall transmit to the Executive Secretary a copy of the record of the proceeding upon transmittal of the recommended decision to the Executive Secretary pursuant to § 308.40. The record shall be accompanied by a docket sheet or similar summary.

**§ 308.12 Filing papers.**

(a) *Filing with Executive Secretary.* Unless expressly provided to the contrary, the original and one copy of all papers required by subpart B to be filed or served shall be filed with the Executive Secretary, provided that premarked proposed exhibits, transcripts, and hearing exhibits shall be filed with the administrative law judge and need not be filed with the Executive Secretary. Filing with the Executive Secretary may be accomplished by regular mail postmarked on or before the due date or by any means authorized in § 308.14.

(b) *Filing with the administrative law judge.* During the period between the appointment of the administrative law judge and the transmittal of a recommended decision by the administrative law judge, one copy of all papers shall be filed with the administrative law judge. During such period, filing with the administrative law judge shall be made in conformity with the time limits and procedures set forth in § 308.14.

(c) *Form of papers.* All papers filed must set forth the name, address, and telephone number of the attorney or party making the filing and shall be accompanied by a certification setting forth when and how service has been made on all other parties. All papers filed must set forth on the first page the caption of the case, the FDIC docket number, the party filing the paper, and the nature or subject matter of the filing.

**§ 308.13 Service of papers.**

(a) *By the Board or its designee.* (1) All documents or papers required to be served by the Board or its designee upon any party shall be served by the Executive Secretary or by such other person as the Board's designee may select. Service shall be made on a party by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the person's residence, by registered or certified mail addressed to the party's last known address, or in any other manner reasonably calculated to give actual notice.

(2) As to a party who has appeared in a proceeding through an attorney of record, service upon that attorney by any means by which a party may be served, by commercial courier, or by first class or express mail shall constitute service on the party.

(b) *By the parties.* Except as otherwise expressly provided, a party filing papers in accordance with this subpart B shall serve them upon the attorneys of record of all other parties to the proceeding, or upon the other parties if they have no attorney of record. Service by a party may be accomplished in any manner in which the Board or its designee can serve an attorney of record under the provisions of paragraph (a) of this section.

(c) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(d) *Nationwide service.* Service in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory or the District of Columbia, service shall be made on at least one branch or agency so involved.

**§ 308.14 Construction of time limits.**

(a) *General rule.* In computing any period of time prescribed by this subpart B, the date of the act or event of default from which the designated period of time begins to run is not to be included. The last day so computed shall be included unless it is a Saturday, Sunday, or federal holiday. When the last day is a Saturday, Sunday, or federal holiday, the period shall run until the end of the next day that is not a Saturday, Sunday, or federal holiday. Intermediate Saturdays, Sundays, and federal holidays shall be included in the computation of time, except that, when the period of time within which an act or event of default is to be performed is ten days or less, intermediate Saturdays, Sundays, and federal holidays shall not be included.

(b) *Methods of service.* To accomplish service the serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, or to the U.S. Post Office for Express Mail delivery; or

(3) Mailing the papers by first class, registered, or certified mail.

(c) *Service and filing of papers.* Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by first class, registered or certified mail, three (3) days shall be added to the prescribed period.

**§ 308.15 Time limits.**

(a) *Grounds for extension of time.* The administrative law judge may for good cause shown, (1) fix or change the time when any action shall be taken; and (2) fix, or change, the place for a hearing to commence or continue.

(b) *On the record.* An extension of time shall only be granted by the administrative law judge in a decision on the record which sets forth the factual basis for that finding that there is good cause for an extension. This requirement applies to contested matters and to requests made on consent of the parties, except that the administrative law judge, in the case of requests on consent for delays or extensions, may, in his or her discretion, grant extensions of five days or less without making such a finding, provided that the hearing date will not be delayed as a result of such extension.

(c) *Extension during consideration of bilateral settlement proposals.* (1) Upon being advised that a stipulation or agreement to settle has been signed by any Respondent and by enforcement counsel for the FDIC, the administrative law judge shall, upon the request of either signing party, stay the proceedings as to that Respondent pending a final decision by the Board or its designee on whether to accept the settlement.

(2) No stipulation or agreement to settle under paragraph (b)(1) of this section which involves less than all of the Respondents shall provide a basis for delaying the proceeding as to any other Respondent who has not signed a settlement stipulation or agreement that has been signed by the FDIC, unless the FDIC and such other Respondent agree

to the delay, and the administrative law judge approves that agreement.

(3) If the Board or its designee rejects any stipulation or agreement to settle covered by paragraph (c)(1) of this section, the schedule of acts to be accomplished in the proceeding shall resume as though the date upon which the Respondent was advised of the rejection of the settlement was the day the proceeding was stayed under paragraph (c)(1) of this section, provided that the administrative law judge may make such adjustments as may be reasonable in light of the delay and in light of proceedings, if any, against other Respondents in the same action.

**§ 308.16 Witness fees and expenses.**

Witnesses subpoenaed to testify or for depositions shall be paid the same fees for attendance and mileage as are paid in the United States district courts, provided that in the case of a discovery subpoena addressed to a party under the provisions of section 308.27, no witness fees or mileage need be tendered or paid. Fees of the witness shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the FDIC is the subpoenaing party. The FDIC shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the FDIC.

**§ 308.17 Unilateral settlement offers to the Board.**

(a) *Submission of unilateral settlement offers.* At any time, and without prejudice to the rights of any party, any Respondent may unilaterally submit to the Executive Secretary for consideration by the Board or its designee, a written offer to settle a proceeding.

(b) *Unilateral settlement offers do not stay proceedings.* Submission of a unilateral settlement offer shall not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this subpart B or any other subpart of Part 308.

(c) *Settlement offer inadmissible as evidence.* No settlement offer, whether made pursuant to paragraph (a) of this section or otherwise, shall be admissible into evidence over the objection of any party.

(d) *Waiver.* A party submitting a unilateral settlement offer waives any objection to participation by interested persons or divisions within the FDIC in any decision or disposition made with respect to such unilateral settlement offer.

**§ 308.18 Confidentiality.**

(a) *All papers and proceedings confidential.* Hearings under this subpart B shall be private unless the Board or its designee determines, after considering the views of the Respondent, that a public hearing is necessary to protect the public interest.

(b) *Unauthorized disclosure prohibited.* No Respodent shall disclose or otherwise use any information which is not publicly available and which was obtained through discovery or at the hearing for any purpose other than litigation of the proceeding, including appeals, if any.

(c) *Disclosure in court proceedings.* Where any FDIC proceeding or order has been appealed to, or otherwise brought before, any court of the United States, this section shall not be read as limiting, or stating a policy favoring limits on, public access to any record or other papers filed, or evidence presented, in such court proceeding.

**§ 308.19 FDIC's right to conduct examinations is unaffected.**

Nothing contained in this subpart B shall be construed as limiting in any manner the right of the FDIC to conduct any examination or visitation of any insured bank or the right of the FDIC to conduct any form of investigation authorized by law.

**§ 308.20 The Notice.**

(a) *Commencement of action.* A proceeding governed by this subpart B shall be commenced by issuance of a Notice.

(b) *Contents of Notice.* (1) The Notice shall set forth:

(i) The basis for the FDIC's jurisdiction over the proceeding;

(ii) The claim showing that the FDIC is entitled to relief; and

(iii) A prayer for an order granting the requested relief. A proposed order may be served in lieu of, or as a supplement to, a prayer for relief.

(2) The Notice shall advise the Respondent:

(i) That an answer must be filed within twenty days after service of the Notice;

(ii) That in actions involving civil money penalties under 12 U.S.C. 1818(i) and 1828(j) a request for hearing must be filed within twenty days after service of the Notice;

(iii) That in actions involving denial of a change in bank control under 12 U.S.C. 1817(j)(4), a request for hearing must be filed within ten days after service of the Notice;

(iv) That a hearing will be held within the judicial district in which a Respondent bank is found or within a judicial district in which at least one Respondent or the bank is found (if the bank is not a Respondent); and

(v) That, unless the administrative law judge sets another date, the hearing will commence (A) within sixty days after service of the Notice for actions involving cease-and-desist orders under 12 U.S.C. 1818(b) or removals and prohibitions under 12 U.S.C. 1818(e), or (B) within *one hundred and twenty* days for all other actions.

**§ 308.21 Answer.**

(a) *Timely answers are required.* (1) Every Respondent shall file an answer with the Executive Secretary within twenty days after service of the Notice. For purposes of Part 308, service of a Notice is deemed to have been accomplished (i) at the time personal service or service on an agent is accomplished, or (ii) if the Notice is mailed, or served in any other manner authorized by § 308.13(a), at the time the Notice is received by the Respondent.

(2) The time to file an answer is not extended by the making of any motion. The administrative law judge may grant an extension of the time to answer for good cause shown. Except as provided in paragraph (d) of this section, only the Board may permit filing of a late answer where a default order has been entered against the Respondent pursuant to paragraph (d) of this section or a Notice of disapproval has become final under the provisions of § 308.54 or an assessment of civil money penalties has become final under the provisions of § 308.75. Extensions of time to answer may be conditioned upon such terms or sanctions as the administrative law judge deems appropriate.

(b) *Content of answer.* An answer shall specifically respond to each paragraph or allegation of fact contained in the Notice and shall admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information shall have the effect of a denial. Denials shall fairly meet the substance of each allegation of fact denied. When a Respondent intends to deny part of an allegation, that part shall be denied and the remainder specifically admitted. Any allegation of fact in the Notice which is not denied in the answer shall be deemed admitted for purposes of the subject proceeding. A Respondent is not required to plead to the portion of a Notice that constitutes the prayer for relief or a proposed order. The answer shall set forth affirmative defenses, if any, asserted by the Respondent.

(c) *Effect of admitted allegations.* (1) If a Respondent does not contest any of the allegations of fact contained in the Notice, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted. Such an answer shall constitute a waiver of hearing on the allegations of fact contained in the Notice, and any further proceedings, including any hearing, shall be limited to the issue of relief.

(2) In cases where the Respondent does not contest any of the allegations of fact contained in the Notice and does not contest the requested relief, the Respondent's answer shall consist of a statement that all of the allegations of fact are admitted and that the request for relief is not contested. Such an answer will constitute a waiver of a hearing on both the allegations of fact and the requested relief, and the administrative law judge shall certify the record to the Executive Secretary, who shall enter an order granting any proper relief that is sought by the Notice.

(d) *Default.* Failure of a Respondent to file an answer within twenty days shall be deemed a waiver of the right to appear and contest the allegations of fact and the requested relief contained in the Notice and a consent by that Respondent to entry of an order granting any proper relief that is sought by the Notice.

(1) When a Notice of disapproval of a change in bank control has been issued under section 7(j) of the Act or an assessment of civil money penalties has been made under section 8(i) or 18(j) of the Act, they shall automatically become final and unappealable unless both the required request for hearing and an answer are timely filed.

(2) In all other proceedings governed by this subpart B, upon the written request of FDIC enforcement counsel, which shall be served on all parties, the Executive Secretary may, at any time more than five days after such service enter a default order granting any proper relief that is sought by the Notice. The Executive Secretary shall not enter a default order under this paragraph if in the Executive Secretary's sole discretion, he or she determines that no default has occurred or that for some other reason the matter should be referred to either the Board or an administrative law judge for further proceedings. The Executive Secretary shall also retain jurisdiction to vacate a default order entered under this paragraph if the Executive Secretary subsequently determines that no default had in fact occurred or that for some other ministerial reason a default order entered under this paragraph should be vacated. Any order entered under this paragraph shall be final and unappealable.

**§ 308.22 Amending pleadings.**

(a) *Amendments.* A Notice or answer may be amended or supplemented upon good cause shown, by leave of the administrative law judge. The Respondent shall answer an amended Notice within the time remaining for the Respondent's answer to the original Notice or within ten days after service of the amended Notice, whichever period is longer.

(b) *Amendments to conform to the evidence.* When issues not raised by the Notice or answer are tried at hearing by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the Notice or answer, and amendments to the Notice and answer are not required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the Notice or answer, the administrative law judge may allow the Notice or answer to be amended when the presentation of the merits of the action will be served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice that party's action or defense upon the merits. If justice so requires, the administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

**§ 308.23 Intervention; persons having official interest.**

(a) *Intervention.* The administrative law judge may, in his or her discretion, allow, upon timely application, a person to intervene for limited purposes, or for all purposes, upon a showing that:

(1) The intervening person has a substantial interest relating to the subject of the action, and the intervening person is so situated that the disposition of the action may as a practical matter impair or impede his or her ability to protect that interest;

(2) The intervening person's interest may not be fully and adequately represented if that person is not allowed to intervene; and

(3) The intervention will not delay the proceeding or otherwise unfairly prejudice any party, provided that no intervenor shall be allowed to appear through counsel for, or any firm representing, any Respondent in the action.

(b) *Persons having an official interest.* (1) The administrative law judge may, in his or her discretion, permit, upon timely application, persons having an official interest in the substance of the proceeding to attend the hearing and to be served with papers. Such persons may include the bank, when not a Respondent or intervenor, other federal banking regulators, any appropriate state banking agency and other interested government agencies.

(2) Persons having an official interest may, if permitted by the administrative law judge in his or her discretion, submit amicus curiae briefs to the administrative law judge within the time periods during which parties may submit briefs.

**§ 308.24 Consolidation and severance of actions.**

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion:

(i) Any two or more proceedings may be consolidated for some or all purposes if each proceeding involves or arises out of the same transaction, occurrence, or series of transactions or occurrences and material common questions of law or fact will arise in each of the proceedings, unless consolidation would cause unreasonable delay or injustice; and

(ii) Any two or more proceedings against the same, or at least one common, Respondent which involve common questions of fact or law may be consolidated for some or all purposes, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule shall be made to avoid unnecessary expense or inconvenience, provided that such adjustment shall not result in delaying the hearing beyond the latest date upon which an unconsolidated hearing involving at least one Respondent in the consolidated proceeding would otherwise have commenced under this subpart.

(b) *Severance.* On the motion of any party or on the administrative law judge's own motion, a proceeding involving two or more Respondents may be severed for some or all purposes if severance (1) is appropriate because the proceeding against one or more Respondents cannot proceed or is being stayed, (2) will promote the prompt resolution of the proceeding as to some or all Respondents, or (3) is otherwise required to prevent injustice.

**§ 308.25 Scope of discovery.**

(a) *Limits on discovery.* Parties to proceedings under this subpart B may obtain discovery only through the production of documents (including

writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, which documents shall be translated, if necessary, by the responder through detection devices into reasonably usable form). No other form of discovery shall be allowed.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and such other privileges as the Constitution, any applicable act of Congress, or the principles of common law provide.

**§ 308.26 Time limits for discovery.**

(a) *General rule.* (1) All initial requests for discovery must be made within forty days after service of the Notice on the Respondent. If there are multiple Respondents, the time for making discovery requests by, and to, each Respondent shall be separately measured from the date on which each Respondent received the Notice.

(2) Except as provided in paragraph (b) of this section, only discovery requests that are based upon or otherwise follow up on discovery responses, including objections, to timely discovery requests may be served after the initial forty day period for making discovery requests. All such follow up requests shall be served within ten days after service of the response upon which they are based.

(b) *Extensions of time.* (1) No extension of the forty-day period to commence discovery shall be granted unless the administrative law judge finds on the record that good cause exists for the extension.

(2) The foregoing notwithstanding, (i) if a Respondent is permitted to file a late answer, FDIC enforcement counsel shall be entitled to serve discovery requests on that party within ten days following the filing of the late answer; and (ii) if the FDIC amends the Notice, and an answer is required, the Respondent shall be entitled to serve discovery requests within the later of forty days following the service of the original Notice or ten days following the filing of the answer to the amended Notice.

**§ 308.27 Document discovery from parties.**

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request shall identify the documents to be produced either by individual item or by category, and shall describe each item and category with reasonable particularity. Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the categories in the request.

(b) *Production or copying.* The request shall specify a reasonable time and manner for production and performing any related acts. In lieu of inspecting the documents, the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying is requested, the party to whom the request is addressed shall bear the cost of copying and shipping if less than 250 pages of copying are requested. If more than 250 pages of copying are requested, the requesting party shall pay for copying, unless the parties agree otherwise, at a rate of $.20 per page plus the cost of shipping.

(c) *Obligation to update responses.* Unless expressly stated to the contrary on its face, or unless otherwise ordered by the administrative law judge, all discovery requests served on a party impose an obligation on that party (1) to update promptly the response through the cut-off date for evidence to be admitted at the hearing as provided in § 308.38(a) if that cut-off date occurs after the date for compliance with the request; and (2) to amend or supplement promptly the response if the responding party learns that (i) the response was materially incorrect when made or (ii) the response is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Objections.* (1) The party upon whom a request is served shall serve its objections to the request within twenty days after service of the request. Any objections not made in writing and within the prescribed period are waived.

(2) The reason for each objection shall be stated with reasonable particularity. If objection is made to only a portion of an item or category in a request, the portion objected to shall be specified.

(3) The date set forth in the request for production of documents shall not be a ground for relief from any provision of the request unless that date is less than twenty days after service of the request or unless the party to whom the request was made certifies that the search for and compilation and copying of the requested documents is expected to require more than 40 hours of work. Under either of those circumstances, the party upon whom the request was served may apply for a reasonable extension of time for production of the requested documents, which extension may be granted for good cause shown. Any extension of time for production shall not extend the time to object to discovery requests under paragraph (d)(1) of this section.

(4) If a party generally objects to all or virtually all of a discovery request without substantial justification, upon motion, the entire objection (except for bona fide privilege claims) shall be stricken. The administrative law judge need not consider whether any specific objections (other than privilege claims) would have been sustained had they been made separately.

(5) Objection to part of a request shall not operate to delay or excuse production of documents pursuant to portions of the request to which no objection is made.

(e) *Privilege.* At the time other documents are produced or within twenty days after service of the discovery request, whichever is later, all documents withheld on grounds of any privilege, other than work-product privilege, shall be reasonably identified, including the basis for the claim of privilege. If a party withholds documents on the ground of work-product privilege, the party shall so state.

(f) *Discovery disputes.* (1) If a party objects to all or any part of a request, fails to comply fully with a request, or withholds any documents as privileged, the requesting party may, within ten days of the making of the objections or the assertion of the privilege claim, or if later, within ten days of the time the failure to comply becomes known, move before the administrative law judge for an order or subpoena requiring production.

(2) A discovery motion provided for in paragraph (f)(1) of this section shall contain a short and plain summary of the matters in dispute, and the nature of the dispute; a precise statement of the relief requested; and the certification required by § 308.30(d). The motion shall have attached to it a copy of the discovery request and the objections thereto. A brief in support of the motion may be filed when the motion is filed.

(3) In response to a discovery motion, any other party shall have the right to submit written views to the

administrative law judge at least one business day prior to the discovery conference provided for in paragraph (g) of this section. Any such response shall specifically identify and address each issue disputed by that party and may include a brief.

(g) *Discovery conferences.* (1) When a discovery motion is made under paragraph (f)(1) of this section, the administrative law judge shall promptly set a discovery conference, unless the administrative law judge concludes, and advises the parties, that the disputed matters can be more expeditiously, or better, resolved by handling this dispute as other written motions are handled under § 308.30, or in some other manner. At any discovery conference, each party shall be given an opportunity to be heard. The administrative law judge shall rule on each disputed matter unless the administrative law judge, in his or her discretion, determines that one or more issues should be further briefed or should be taken under advisement. As to all matters not resolved at the discovery conference, the administrative law judge shall promptly after the conference decide those matters that are not more properly held for decision at the hearing.

(2) If the moving party fails to attend the discovery conference and such failure is not excused, the motion shall be denied. If the party from whom discovery is sought does not either attend the discovery conference or submit a written response to the motion, that party shall be deemed to have waived any right to object to the requested discovery and to have consented to entry of an appropriate order or ruling.

(3) In addition to, or in lieu of, ordering production of requested documents or issuing a subpoena under this section, the administrative law judge may impose any appropriate sanctions authorized in § 308.49.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with that subpoena. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to produce subpoenaed documents.

**§ 308.28 Document subpoenas to nonparties.**

(a) *General rule.* (1) Any party may apply to the administrative law judge for the issuance of a document subpoena addressed to any person who is not a party to the proceeding. The application shall contain a proposed document subpoena and a brief statement of the reasons for the issuance of the subpoena. Pre-printed forms of subpoenas are available from the appropriate Regional Office or the Office of the Executive Secretary. The subpoenaing party shall specify a reasonable time, place, and manner for making production under the document subpoena. Any requested subpoena shall be promptly issued unless the administrative law judge determines that the application does not set forth a valid basis for issuance of the subpoena or otherwise fails to conform to the requirements of this subpart B, provided that the administrative law judge may, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(2) The party obtaining the document subpoena shall be responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(3) Issuance of any subpoena under this paragraph (a) is without prejudice to the right of the subpoenaed person to object before the administrative law judge, in the manner set forth in paragraph (c) of this section, to all or any part of the subpoena.

(b) *Scope of document subpoenas.* (1) The scope of document subpoenas issued under this section is the same as that for document requests under § 308.25(b). Any document subpoena sought under this section must be applied for within the period during which the applying party could serve a document request under the provisions of § 308.26.

(2) Any questioning at a deposition of a person producing documents pursuant to a document subpoena shall be strictly limited to the identification of documents produced by that person and a reasonable examination to determine whether the subpoenaed person made an adequate search for, and has produced, all subpoenaed documents.

(3) Every party shall have a right to inspect and copy all documents produced pursuant to a document subpoena.

(4) If the subpoenaing party agrees to inspect documents other than at the time and place designated in the document subpoena, or to receive copies in lieu of inspecting documents, it shall be the duty of the subpoenaing party to assure that all other parties have access to all documents inspected by or delivered to the subpoenaing party, at substantially the same time as access is obtained by the subpoenaing party.

(c) *Objections.* (1) The subpoenaed person may object within the time limits and on the same basis, including assertion of privilege, upon which a party could object under § 308.27(d) to a document request.

(2) if the subpoenaed person objects to all or any part of a document subpoena, fails to fully comply with a document subpoena, or withholds any document as privileged, the subpoenaing party may, within ten days of the making of the objections or the assertion of the claim of privilege, or if later, within ten days of the time the failure to comply becomes known, seek to compel compliance with the document subpoena in the manner provided in § 308.27 (f) and (g).

(3) In lieu of objecting to a document subpoena, the subpoenaed person may within twenty days after service of the subpoena on the subpoenaed person move before the administrative law judge to revoke, quash, or modify the subpoena. A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties. Any party may respond to the motion within ten days after the motion is made.

(d) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge issued pursuant to paragraph (c) of this section which directs compliance with all or any portion of a document subpoena, the subpoenaing party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who procures a failure to comply with a subpoena issued under this section.

**§ 308.29 Depositions of witnesses unavailable for hearing.**

(a) *General rule.* (1) If a witness will not be available for the hearing, the

administrative law judge may issue a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon a showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) If the application for a subpoena sets forth a valid basis for its issuance, the administrative law judge may either issue the deposition subpoena or, on his or her own motion, request briefs or hold a conference concerning whether a requested subpoena should be issued.

(3) A pre-printed form of the subpoena shall be available from the appropriate Regional Office or from the Office of the Executive Secretary. The subpoena shall name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place within one hundred miles of the witness's residence or regular place of employment as the administrative law judge shall fix.

(4) The party obtaining deposition subpoenas shall be responsible for serving them on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on less than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession, or the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may move before the administrative law judge to revoke, quash, or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to revoke, quash, or modify a subpoena issued under this section must accompany the motion. The motion must be on notice to all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying upon oral deposition shall be duly sworn, and each party shall have the right to examine the witness. Objections to questions or evidence shall be in short form, stating the grounds for the objection. Failure to object to questions or evidence shall not be deemed a waiver except where the ground for the objection is one which might have been avoided or removed if presented at that time. All questions, answers, and objections shall be on the record.

(2) The deposition shall be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(3) Any party may move before the administrative law judge for an order compelling the witness to answer any questions or submit any evidence the witness has refused to answer or submit during the deposition. The motion must be on notice to all parties.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(3) of this section, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a deposition subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who fails to comply with, or procures a failure to comply with, a subpoena issued under this section.

**§ 308.30 Motions.**

(a) *General rule.* (1) This section governs all motions except motions concerning discovery disputes which are governed by § 308.27. An application for an order shall be made by written motion, unless made during a conference or a hearing. The administrative law judge may, in his or her discretion, require that any oral motion be submitted in writing.

(2) All motions shall state with particularity the grounds therefor and the relief or order sought. A memorandum of law, affidavits, or other appropriate papers may be filed in support of any motion at the time the motion is made. All written motions shall be accompanied by a form of proposed order. No oral argument shall be heard on written motions unless the administrative law judge directs otherwise.

(3) All motions shall be decided promptly and each decision shall be memorialized either in writing or on the record.

(b) *Responses.* (1) Within ten days, or such shorter period as the administrative law judge may direct, after service of any written motion under paragraph (a) of this section, any party may file a written response to a motion. Any such responses shall be accompanied by a form of proposed order.

(2) When an oral motion is made under paragraph (a) of this section, unless the administrative law judge in his or her discretion directs that the response be in writing, any opposing party shall be given an opportunity to respond to the motion orally before the administrative law judge rules on the motion.

(3) The failure of any party to oppose a motion shall be deemed a waiver of the right to oppose the motion and a consent by that party to the entry, in the case of written motions, of an order substantially in the form of the order accompanying the motion, and in the case of oral motions, of an order providing the relief requested.

(c) *Replies.* If any party's written response to a motion raises new issues or arguments, the moving party may, within five days of service of that response, serve a reply that is strictly limited to addressing those new issues or arguments. No further filings relating to the motion shall be permitted unless the administrative law judge, on his or her own motion, so directs.

(d) *Good-faith attempt to resolve disputes.* (1) No written motion shall be made under this section unless the attorney for the moving party, or the moving party if unrepresented, certifies that (i) the attorney or party has met (in person or by telephone) with opposing counsel, or if unrepresented, the opposing party, in a good-faith effort to resolve the dispute that is the subject of the motion, or (ii) the opposing attorney or party, despite the moving party's reasonable efforts, cannot be contacted or has refused to participate in such a meeting.

(2) The requirement of paragraph (d)(1) of this section shall not apply to

motions for summary judgment, motions to dismiss, or other dispositive motions that would, if granted, substantially dispose of the case as to one or more Respondents.

**§ 308.31 Interlocutory appeals to the Board.**

(a) *General rule.* (1) Rulings or orders by an administrative law judge may not be appealed to the Board prior to submission of the record to the Board pursuant to the provisions of § 308.42, unless the Board, in its sole discretion, grants special permission to appeal.

(2) Special permission to appeal a ruling or order will only be granted if (i) the interlocutory appeal involves an important, unresolved issue of general application that should be immediately decided by the Board or (ii) the interlocutory appeal involves clear error below, and the rights of a party are likely to be severely prejudiced if the matter is not immediately decided by the Board. A party's ongoing costs of administrative litigation will not be considered as a basis for hearing an interlocutory appeal.

(b) *Procedures.* (1) A party may, within ten days after the entry of an interlocutory ruling or order by the administrative law judge, apply to the Board for special permission to appeal that ruling or order. Any such application shall state with particularity the basis under paragraph (a) of this section upon which special permission to appeal should be granted. The application shall also either state that the party relies on its brief before the administrative law judge or be accompanied by the party's brief to the Board on the merits.

(2) Any other party may, within ten days of service of the application, file a brief with the Board opposing the grant of special permission to appeal. Any other party may, regardless of whether that party opposes the grant of special permission, within the same ten-day period, either file a brief with the Board concerning the merits or advise the Board, in writing, that the party relies on its brief before the administrative law judge.

(3) There shall be no right of reply to the briefs filed or relied upon pursuant to paragraph (b)(2) of this section unless the Board, on its own motion, requests a reply.

(4) When an application has been made and the time within which to file papers pursuant to paragraphs (b)(1) and (b)(2) of this section has expired, the Executive Secretary shall submit the application and all other papers to the Board. The Executive Secretary shall notify the administrative law judge and all parties when the application has been submitted to the Board.

(c) *Proceeding not stayed.* Interlocutory appeals under this section do not stay proceedings before the administrative law judge. The Board or the administrative law judge may, however, order a stay upon a finding on the record that the party aggrieved by the appealed ruling or order has shown a substantial likelihood of success before the Board on the merits of the interlocutory appeal and that substantial hardship or injustice is likely to result if a stay is not granted, provided that only the Board may grant any stay or series of stays exceeding a total of thirty days.

**§ 308.32 General procedures.**

(a) *Scheduling when there is a fixed date of hearing.* If a hearing date has been fixed by the administrative law judge, then that hearing date shall be used in determining dates for making the prehearing submissions and taking the prehearing actions required or authorized by § 308.33.

(b) *Scheduling when the date of hearing is not fixed.* If a hearing date has not been fixed by the administrative law judge, a date one hundred and twenty days after service of the Notice shall be used as the hearing date in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided that in proceedings under 12 U.S.C. 1818 (b) and (e), as to which the sixty-day period for hearing has not been waived or extended pursuant to the provisions of § 308.34(a)(2), a date sixty days after service of the Notice shall be used as the hearing date in determining dates for making the submissions and taking the actions required or authorized by § 308.33, provided further that unless the administrative law judge orders otherwise, in cases involving multiple Respondents, the one hundred and twentieth day, or sixtieth day, shall be measured from the date the last Respondent was served with the Notice.

**§ 308.33 Prehearing submissions and conferences.**

(a) *Prehearing preparations.* Prehearing preparations for each action governed by this subpart B shall, unless the administrative law judge orders to the contrary, include:

(1) The exchange of proposed statements of the issues, stipulations, exhibits, and witness lists as provided in paragraph (b) of this section;

(2) The filing of a joint statement of issues and stipulations and of each party's exhibits and witness list as provided in paragraph (c) of this section;

(3) The simultaneous filing of prehearing briefs as provided in paragraph (d) of this section;

(4) The holding of a prehearing conference as provided in paragraph (e) of this section; and

(5) Any other prehearing preparations, such as other filings, conferences, schedules, and other orders, as the administrative law judge, on motion of any party, or on the administrative law judge's own motion, deems appropriate.

(b) *Prehearing exchange and meeting of counsel.* (1) Not less than thirty-five days before the hearing date, each party shall serve on every other party (but unless otherwise ordered shall not file, except in connection with proceedings for sanctions under paragraph (f) of this section), the party's:

(i) Proposed statement of the issues;

(ii) Proposed stipulations;

(iii) Proposed trial exhibits; and

(iv) Proposed witness list, including the name and address of each witness and a short summary of the expected testimony by each witness.

(2) Sufficiently in advance of the fifteenth day before the hearing date as to allow compliance with paragraph (c) of this section, all parties shall meet and attempt to agree upon (i) a joint statement of the issues, (ii) stipulations, and (iii) stipulations that proposed trial exhibits are admissible or, if admissibility is not stipulated, that proposed trial exhibits are authentic.

(c) *Prehearing filings.* (1) Not less than fifteen days before the hearing date, the parties shall file (i) a joint statement of the issues for hearing, provided that if there is no joint statement of issues, each party shall file its own statement of issues, and (ii) stipulations, if any.

(2) Not less than fifteen days before the hearing date, each party shall file (i) that party's premarked trial exhibits with an accompanying stipulation concerning the admissibility or authenticity of each exhibit and (ii) that party's witness list.

(d) *Prehearing brief.* Not less than fifteen days before the hearing date, each party shall file a prehearing brief.

(e) *Prehearing conference.* (1) A prehearing conference may be held at such time and place as the administrative law judge designates. If such a conference is required by the administrative law judge, the conference shall be participated in by at least one of the attorneys who will conduct the trial for each of the parties, and by any unrepresented parties. Unless otherwise directed by the administrative law judge the conference shall be recorded by a

court reporter. The participants at the conference shall formulate a plan for trial, including a program for facilitating the admission of evidence and shall address such other matters as the administrative law judge may reasonably direct.

(2) At or within a reasonable time following the conclusion of the prehearing conference, the administrative law judge shall serve on each party a prehearing memorandum or order containing agreements reached and any determinations made. Such an order may, in the administrative law judge's discretion, be dictated into the record at the conference.

(f) *Effect of failure to comply.* (1) Any party who fails to exchange proposed exhibits or witness lists as required by paragraph (b) of this section or fails to submit exhibits or witness lists as required by paragraph (c) of this section shall be deemed to have forfeited its right to introduce any exhibits or call any witness in its case-in-chief at the hearing. Any exhibit or witness not included in the party's final exhibit or witness list may not be introduced or called by that party in its case-in-chief at the hearing. Relief from this paragraph (f) may be granted only for good cause shown and upon such terms as are just.

(2) Failure to file a prehearing brief as required in paragraph (d) of this section shall be deemed a waiver of the right to file a prehearing brief. Late briefs may be accepted for filing only if the moving party can show that failure to accept the late brief would materially prejudice the movant and injustice would result.

(3) If any party fails to exchange or file documents required under paragraph (b) or (c) of this section, any other party, or the administrative law judge, on his or her own motion, may serve a request that the party state, within five days of receipt of the request, whether that party will appear at the hearing and litigate the case on the merits. The response shall be signed by counsel (if any) appearing for the party or by any party who is not represented by counsel. Failure of a party to respond by filing a timely and express statement that the party will appear at the hearing and litigate on the merits shall be deemed a waiver by that party of his or her right to a hearing, and a default order may be entered against that party by the Executive Secretary as provided for in § 308.21(d).

(4) Upon the failure of any party to comply fully and in good faith with the requirements of this section, including without limitation, the failure to stipulate to facts or to the authenticity or admissibility of documents as to which there is no good-faith dispute, the administrative law judge may, on the motion of any party, or on the administrative law judge's own motion, impose any appropriate sanction authorized in section 308.49.

**§ 308.34 Hearings.**

(a) *When held.* (1) Except as provided in paragraph (a)(2) of this section, hearings shall commence within one hundred and twenty days of service of the Notice, unless the administrative law judge makes a finding of good cause for holding the hearing at a later date. No hearing shall be continued to a date more than one hundred and fifty days after service of the Notice except upon a finding, on the record, that:

(i) It is impractical to commence the hearing within one hundred and fifty days of service of the Notice;

(ii) There is a need to provide time to obtain a final decision by the Board or its designee on whether to accept an agreed settlement offer, as provided in § 308.15; or

(iii) The ends of justice require a continuance.

(2) Hearings under 12 U.S.C. 1818 (b) and (e) may not be continued beyond sixty days after service of the Notice over the objection of any party, unless the administrative law judge finds, on the record, that holding the hearing within sixty days is impractical or would materially and unfairly prejudice one or more parties or otherwise would be unjust. The parties to any action under 12 U.S.C. 1818 (b) or (e) may, at any time, agree in writing to waive the subject sixty-day period and to have the provisions of paragraph (a)(1) of this section govern the schedule upon which the action will be heard.

(b) *Effect of failure to appear at hearing.* The failure of any party to appear at the hearing personally or by a duly authorized attorney shall be deemed a waiver of the right to a hearing and a consent to the entry of an order of default. The default order shall be entered by the Executive Secretary, as provided for in § 308.21(d).

**§ 308.35 Hearing subpoenas.**

(a) *Issuance.* (1) Upon the representation of any party that it intends to call a named person as a witness or has a good-faith intention of calling that person as a witness if certain evidence is or is not admitted, any party may apply for the issuance of, and the administrative law judge may at any time during the proceeding issue, hearing subpoenas requiring the attendance of the subpoenaed person at a hearing. Pre-printed forms of subpoenas are available from the appropriate Regional Office or the Office of the Executive Secretary.

(2) The administrative law judge shall not issue a hearing subpoena duces tecum addressed to a party except upon a finding, on the record, that either (i) the subpoenaing party could not reasonably have anticipated the need for the subpoenaed documents during the discovery period prescribed by § 308.26 or (ii) the subpoenead documents were requested in a document request that was served on the subpoenaed party during the discovery period, and the relevant portion of that document request was not quashed or modified in writing.

(3) Hearing subpoenas may require that the witness appear at any place designated for the hearing. The party obtaining a hearing subpoena shall be responsible for serving it on the witness and for serving copies on all other parties. There shall be service of process for hearing subpoenas in any state, territory, possession, the District of Columbia or on any person or company doing business in any state, territory, possession, or the District of Columbia.

(b) *Objection to hearing subpoenas.* (1) A person named in a hearing subpoena, or any party, may apply to the administrative law judge to revoke, quash, or modify the subpoena. The application must be on notice to all parties. The application must be made prior to the time for compliance specified in the subpoena and must be made within ten days after service of the subpoena on the person making the application.

(2) A statement of the basis for the order to revoke, quash, or modify a hearing subpoena under this paragraph (b) must accompany the application.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a hearing subpoena, the subpoenaing party or any other aggreived party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the subpoena as the administrative law judge has ordered complied with. A party's right to seek court enforcement of a subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party that fails to comply with, or procures failure to comply with, a hearing subpoena.

**§ 308.36 Conduct of hearings**

(a) *General rules.* (1) Hearings shall be conducted to provide a fair and

expeditious trial of the relevant, disputed issues.

(2) The administrative law judge shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (i) make the interrogation and presentation effective for the ascertainment of the truth; (ii) avoid needless consumption of time; and (iii) protect witnesses from harassment.

(b) *Order of hearing.* (1) Unless the administrative law judge directs otherwise, all stipulations of fact and law previously filed in the case, and all documents the admissibility of which has been previously stipulated in the case, shall automatically be admitted into evidence upon commencement of the hearing.

(2) The administrative law judge shall determine, and advise the parties, prior to the commencement of the hearing, whether opening and/or closing statements will be allowed.

(3) FDIC enforcement counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge or unless otherwise expressly provided in this Part 308. If there are multiple Respondents, Respondents may agree among themselves as to the order in which Respondents shall present their case-in-chief, but if they do not agree, the administrative law judge shall fix the order.

(c) *Cross-examination.* (1) Each party shall have the right to cross-examine the other parties' witnesses, provided that the administrative law judge shall limit cross-examination that is unduly repetitive.

(2) During cross-examination any party may move the admission into evidence of any admissible document shown to the witness during that cross-examination.

(3) Cross-examination should be limited to the subject matter of that witness's direct examination and matters pertaining to the credibility of the witness. The administrative law judge may permit inquiry into additional matters as if on direct examination if (i) it appears likely to facilitate completion of the proceeding, (ii) it will not unfairly disrupt presentation of the case-in-chief (or rebuttal case) of the party calling the witness, and (iii) all parties (other than the party who has called that witness) agree that if such broader inquiry is permitted, they will not call that witness during their case-in-chief or, if they have presented their case-in-chief, in their rebuttal case. Such broader inquiry on cross-examination should generally not be permitted if the witness was called as an adverse party, a hostile witness, or a witness identified with an adverse party.

(c) *Rebuttal evidence.* Rebuttal evidence shall be limited to material new issues or to new evidence concerning material disputes, including expert opinion. The parties shall present their rebuttal evidence, if any, in the same order in which they presented their case-in-chief.

(e) *Leading questions.* Leading questions should not be used on the direct examination of a witness except as may be necessary to develop that witness's testimony. Ordinarily leading questions should be permitted on cross-examination except where matters outside the scope of the direct examination are inquired into under paragraph (c) of this section. When a party calls an adverse party, a hostile witness, or a witness identified with an adverse party, interrogation may be by leading questions.

**§ 308.37 Written testimony in lieu of oral hearing.**

(a) *General rule.* (1) At any time more than fifteen days before the hearing is to commence, on the motion of any party or on his or her own motion, the administrative law judge may order that the parties present part or all of their case-in-chief and, if ordered, their rebuttal, in the form of exhibits and written statements sworn to by the witness offering such statements as evidence, provided that if any party objects, the administrative law judge shall not require such a format if that format would violate the objecting party's rights under the Administrative Procedure Act, or other applicable law, or would otherwise unfairly prejudice that party.

(2) Any such order shall provide that each party shall, upon request, have the same right of oral cross-examination (or redirect examination) as would exist had the witness testified orally rather than through a written statement. Such order shall also provide that any party has a right to call any hostile witness or adverse party to testify orally.

(b) *Scheduling of submission of written testimony.* (1) If written direct testimony and exhibits are ordered under paragraph (a) of this section, the administrative law judge shall require that it be filed within the time period for commencement of the hearing under § 308.34, and the hearing shall be deemed to have commenced on the day such testimony is due.

(2) Absent good cause shown, written rebuttal, if any, shall be submitted and the oral portion of the hearing begun within thirty days of the date set for filing written direct testimony.

(3) Unless the administrative law judge directs otherwise, (i) all parties shall simultaneously file any exhibits and written direct testimony required under paragraph (b)(1) of this section, and (ii) all parties shall simultaneously file any exhibits and written rebuttal required under paragraph (b)(2) of this section.

(c) *Failure to comply with order to file written testimony.* (1) The failure of any party to comply with an order to file written testimony or exhibits at the time and in the manner required under this section shall be deemed a waiver of that party's right to present any evidence, except testimony of a previously identified adverse party or hostile witness. Failure to file written testimony or exhibits is, however, not a waiver of that party's right of cross-examination or a waiver of the right to present rebuttal evidence that was not required to be submitted in written form.

(2) Late filings of papers under this section may be allowed and accepted only upon good cause shown.

**§ 308.38 Evidence.**

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence shall be admissible to the fullest extent authorized by the Administrative Procedure Act, other applicable statutes, and the common law; provided that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence. Without limiting the foregoing, any evidence that would be admissible in a United States district court under the Federal Rules of Evidence is admissible in any proceeding governed by this Subpart B.

(2) No evidence concerning any act or event occurring after the date of the Notice shall be deemed relevant or otherwise admissible as to the fact of the violation of a law, rule, regulation, or any written agreement entered into with the FDIC, as to the fact of an unsafe or unsound practice, or as to the fact of a breach of fiduciary duty, in any proceeding as set forth in § 308.04.

(3) Evidence concerning any act or event occurring after the date of the Notice may be admitted only for the express and limited purpose of assisting the administrative law judge in fashioning an order. Upon motion of a party for the admission of such evidence, the administrative law judge must make a finding on the record that such evidence is material and probative

to the fashioning of an order before such evidence may be admitted.

(b) *Privilege.* (1) The rules of privilege contained in § 308.25 which are applicable to discovery apply equally to hearings.

(2) Documentary evidence which a party had previously withheld from discovery under a claim of privilege shall not be received on behalf of such party at the hearing, nor shall related testimony, unless the administrative law judge finds that the exclusion of this evidence would result in manifest injustice. The administrative law judge may condition the admission of such evidence on such terms as are just to all parties.

(c) *Official notice.* Official notice may be taken of any material fact which might be judicially noticed by a district court of the United States and any material information in the official public records of the FDIC. All matters officially noticed by the adminstrative law judge shall appear on the record. If official notice is requested or taken of any fact, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(d) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as an original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Relevant Reports of Examination or Visitation Reports prepared by the FDIC, whether or not such documents were prepared as a result of joint or concurrent examinations or visits, are admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, or outlines to summarize, illustrate, or simplify the presentation of testimony. Such documents may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(e) *Unavailable witness.* If a witness is unavailable to testify at the hearing, and that witness has been deposed under the provisions of § 308.29, any party may offer as evidence all or any part of the transcript of the deposition, incuding deposition exhibits, if any. Such deposition transcript shall be admissible to the same extent that the testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the deposition, the administrative law judge may on that basis limit the admissibility of the deposition in any manner that justice requires. Only those portions of a deposition received in evidence at the hearing shall constitute a part of the record.

(f) *Objections to evidence.* (1) Objections to evidence must be timely made and shall briefly state the grounds relied upon. The transcript shall include any argument or debate thereon, except as otherwise ordered by the administrative law judge with the consent of all parties. Rulings on all objections shall appear in the record. Failure to object shall be deemed a waiver of any objection.

(2) When an objection to a question or line or questioning propounded to a witness is sustained, the examining attorney may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness. The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record and transmit such rejected exhibits to the Executive Secretary pursuant to § 308.40.

**§ 308.39 Post-hearing papers.**

(a) *Post-hearing filings.* Each party who participates in a hearing shall file with the administrative law judge (1) proposed findings of facts, which shall set forth specific page references to those portions of the record relied upon to support each proposed finding; (2) proposed conclusions of law; and (3) a proposed order.

Any party may, at that time, file a post-hearing brief. The papers required or allowed by this paragraph (a) shall be filed within thirty days after the date the hearing transcript is delivered to all parties or is filed, whichever is earlier.

(b) *Reply briefs.* Reply briefs may be filed within fifteen days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs shall be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed either proposed findings of fact and conclusions of law or a post-hearing brief, shall not be permitted to file a reply brief.

**§ 308.40 Recommended decision and filing of record.**

(a) *Post-hearing filing.* (1) Within fifty days after expiration of the time allowed for filing proposed findings, conclusions, and orders under section 308.39(a), the administrative law judge shall file with the Executive Secretary the record of the proceeding which shall include the administrative law judge's recommended decision, findings of fact, conclusions of law, and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. At the request of any party, the record shall also include any proffered evidence which was excluded.

(2) At the time of filing of the record with the Executive Secretary, the administrative law judge shall serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

(3) The Executive Secretary may extend the period for the filing of the recommended decision, findings, conclusions, proposed order, and record by the administrative law judge.

(b) *Filing when a summary judgment is recommended.* If the administrative law judge recommends a final disposition of an action in response to a motion for summary judgment, motion to dismiss, or comparable dispositive motion as to one or more parties, the administrative law judge shall promptly file with the Executive Secretary that recommendation and the portion of the record (or a copy thereof) which pertains to that dispositive motion.

**§ 308.41 Exceptions to recommended decision.**

(a) *Filing.* (1) Within twenty days after service of the recommended decision, findings, conclusions, and proposed order under § 308.40, a party may file with the Executive Secretary written exceptions thereto. The exceptions may include exceptions to the failure of the administrative law judge to make any recommendation for relief, finding, or conclusion; to the admission or exclusion of evidence; and to any other ruling. A supporting brief may be filed at the time the exceptions are filed.

(2) Exceptions and briefs in support thereof which are not filed within the time period provided in paragraph (a)(1) of this section shall not be accepted for filing, except that prior to the Executive Secretary's certification of the record to the Board for decision pursuant to § 308.42, the Executive Secretary may upon a showing of good cause allow late filing. Exceptions and briefs in support thereof shall not be accepted for filing after the record is certified to the Board under § 308.42 unless the Board, in its sole discretion, decides to accept them.

(b) *Contents.* (1) All exceptions and briefs in support of exceptions shall be confined to the particular matters in, or omissions from, the administrative law judge's recommendations as to which that party takes exception.

(2) All exceptions and briefs in support of exceptions shall set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

(c) *No replies permitted.* There shall be no replies to exceptions, or other additional papers however styled, unless the Board, on its own motion, requests the filing of additional papers.

(d) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed shall be deemed a waiver of objection thereto.

(2) No exceptions shall be considered if the party taking exception has an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

**§ 308.42 Notice of submission to the Board.**

When the administrative law judge has filed the record of proceeding with the Executive Secretary pursuant to section 308.40, the Executive Secretary shall submit the official record of the action to the Board after expiration of the time for filing exceptions and shall notify the parties that the action has been submitted to the Board.

**§ 308.43 Post-hearing oral argument before the Board.**

(a) *When oral argument is permitted.* (1) Upon the written request of a party, or on its own motion, the Board may, in its sole discretion, order oral argument on the findings, conclusions, and recommended decision of the administrative law judge, or on any specific issue raised in the action.

(2) Any party's request for oral argument must be made within the time prescribed in § 308.41 for filing exceptions. The Board may enter an order requiring oral argument and setting aside the notice of submission of the record to the Board at any time before the Board renders its final decision on the case.

(b) *Procedure for oral argument.* (1) Oral agrument ordered under this section shall be before the Board or its designee. Oral argument under this section shall be recorded.

(2) Unless the Board directs otherwise, (i) oral argument shall be limited to a total of forty minutes of which FDIC enforcement counsel shall be allotted one-half, and (ii) FDIC enforcement counsel shall open the oral argument and may reserve up to one-half of their time for reply.

**§ 308.44 Decision by the Board.**

(a) *Decision to be made within ninety days.* (1) The Board shall issue its decision within ninety days after the Executive Secretary has submitted the record to the Board. If oral argument is ordered under § 308.43, the Board shall issue its decision within ninety days after the submission of the record to the Board or thirty days after oral argument, whichever is later.

(2) Within the ninety-day period provided in this section, the Board may set aside any notice that the case has been submitted to the Board for final decision and remand the case or any aspect thereof to the administrative law judge for further proceedings. In such a case, the provisions of §§ 308.34 through 308.44 shall apply to the remanded proceeding, unless the Board or administrative law judge orders otherwise. When a case is remanded, the ninety-day period within which the Board shall issue its decision shall start anew upon the submission of the record to the Board following the completion of the hearing or remand.

(b) *Motion for reconsideration.* Within fifteen days from the date of the issuance of the decision and order of the Board, a party may file a motion for reconsideration of such decision and order (except a decision and order already previously denied upon reconsideration). The petition must be in writing and should (i) specify reasons why the FDIC should reconsider its action and (ii) set forth relevant information that for good cause was not previously set forth.

(c) *FDIC staff participation.* Appropriate members of the FDIC staff who have not participated in the performance of investigative or prosecutorial functions in the particular case, or in a factually related case, may advise and assist the Board in the consideration of the particular case and in the preparation of documents for its disposition.

(d) *Copies.* The Executive Secretary shall serve copies of the decision and order of the Board on the parties and on the bank concerned. Copies shall also be furnished to the appropriate state supervisory authority in the case of an insured nonmember bank, including a state branch of a foreign bank. Where the proceedings involve termination of the insured status of a state member bank, copies shall also be furnished to the Board of Governors of the Federal Reserve System and to the appropriate state supervisory authority. Where the proceedings involve termination of the insured status of a national bank, a district bank, or a federal branch of a foreign bank, copies shall also be furnished to the Comptroller of the Currency. Where proceedings involve termination of the insured status of a federal savings bank, copies shall also be furnished to the Federal Home Loan Bank Board.

**§ 308.45 Stays pending appeal.**

The commencement of proceedings for judicial review of a decision and order of the Board shall not, unless specifically ordered by the Board or the court, operate as a stay of any order issued by the Board. The Board may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on an appeal of that order.

**§ 308.46 Collateral attacks on administrative proceedings.**

In an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an administrative proceeding governed by this subpart B, the challenged administrative proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the administrative proceeding within the times prescribed in this subpart B shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

**§ 308.47 Conflicts of interest.**

(a) *General rule.* No attorney, law firm, or other person acting in a representative capacity shall represent two or more persons, at least one of whom is a party to a proceeding governed by this subpart B, if there is, as to any matter relating directly or indirectly to the proceeding under this subpart B, any material and actual conflict of interest between the persons represented.

(b) *Certification and waiver.* No attorney, law firm, or other person may represent two or more parties to a proceeding under this subpart B, or a party and a bank to which notice of a proceeding must be given under this subpart B, unless the attorney certifies in writing at the time of filing the notice of appearance required by § 308.08: (1) that the attorney has personally and fully discussed the possibility of conflicts of interest with each such party or bank; (2) that each such party or bank has advised the attorney that to its knowledge there is no existing or anticipated material conflict between its

interests and the interests of others represented by the same attorney or his or her firm; and (3) that each such party or bank waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding, including any appeals.

(c) *Disqualification.* The administrative law judge may take protective measures at any stage of a proceeding to cure a conflict of interest, including issuance of an order disqualifying an individual or firm from appearing in a representative capacity in that proceeding.

**§ 308.48 Ex parte communications.**

(a) *Definition.* "Ex parte communication" means any material oral or written communication concerning a proceeding, which takes place between a party or another person interested in the proceeding and the administrative law judge handling that proceeding, any member of the Board, or any person assisting the administrative law judge or Board in preparing a decision with respect to that proceeding, and which was neither on the record nor on reasonable prior notice to all parties. Requests for status reports are not ex parte communications.

(b) *Prohibition on ex parte communications.* From the time the Notice is served, no person, including any person involved in the decisional process concerning the proceeding, shall make or knowingly cause to be made an ex parte communication concerning the proceeding.

(c) *Communications involving the administrative law judge.* (1) The administrative law judge shall not consult anyone within the FDIC on any matter in issue, unless upon notice and opportunity for all parties to participate. This section shall not be construed as prohibiting the administrative law judge from consulting with the Office of the Executive Secretary concerning procedural matters.

(2) The administrative law judge shall not be responsible to, or subject to the supervision or direction of, any officer, employee, or agent of the FDIC engaged in the performance of investigative or prosecutorial functions.

(d) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is made, all such written communications, or if the communication is oral, a memorandum stating the substance of the communication, shall be placed on the record of the proceeding and served on all parties.

(e) *Sanctions.* To the extent consistent with the interests of justice and the policy of the Act, knowing violation of this section may be a ground for a decision adverse to a party who violates this section or may be a ground for suspension or disbarment of any person engaging in such conduct, as provided for in § 308.50.

**§ 308.49 Sanctions.**

(a) *General rule.* Appropriate sanctions may be imposed when any counsel or party has acted, or failed to act, in a manner required by applicable statute, regulations, or order, and that act or failure to act (1) constitutes contemptuous conduct; (2) has in a material way injured or prejudiced some other party in terms of substantive injury, incurring additional expenses including attorney's fees, prejudicial delay, or otherwise; (3) is a clear and unexcused violation of an applicable statute, regulation, or order; or (4) has unduly delayed the proceeding.

(b) *Sanctions.* Sanctions which may be imposed include any one or more of the following: (1) Issuing an order against the party; (2) rejecting or striking any testimony or documentary evidence offered, or other papers filed, by the party; (3) precluding the party from contesting specific issues or findings; (4) precluding the party from offering certain evidence or from challenging or contesting certain evidence offered by another party; (5) precluding the party from making a late filing or conditioning a late filing on any terms that are just; and (6) assessing reasonable expenses, including attorney's fees, incurred by any other party as a result of the improper action or failure to act.

(c) *Limits on dismissal as a sanction.* No recommendation of dismissal shall be made by the administrative law judge or granted by the Board based on the failure to hold a hearing within the time period called for in this Part 308, or on the failure of an administrative law judge to render a recommended decision within the time period called for in this Part 308, absent a finding that the delay (1) resulted solely or principally from the conduct of the FDIC enforcement counsel; (2) that the conduct of the FDIC enforcement counsel is unexcused; (3) that the moving Respondent took all reasonable steps to oppose and prevent the subject delay; (4) that the moving Respondent has been materially prejudiced or injured; and (5) that no lesser or different sanction is adequate.

(d) *Procedure for imposition of sanctions.* (1) The administrative law judge, upon the request of any party, or on his or her own motion, may impose sanctions in accordance with this section, provided that the administrative law judge may only recommend to the Board the sanction of entering a final order determining the case on the merits.

(2) No sanction, other than refusing to accept late papers, authorized by this section shall be imposed without prior notice to all parties and an opportunity for any counsel or party against whom sanctions would be imposed to be heard. Such opportunity to be heard may be on such notice, and the response may be in such form, as the administrative law judge directs. The opportunity to be heard may be limited to an opportunity to respond orally immediately after the act or inaction covered by this section is noted by the administrative law judge.

(3) Requests for the imposition of sanctions by any party, and the imposition of sanctions, shall be treated for interlocutory review purposes in the same manner as any other ruling by the administrative law judge.

(3) *Section not exclusive.* Nothing in this section shall be read as precluding the administrative law judge or the Board from taking any other action, or imposing any restriction or sanction, authorized by applicable statute or regulation.

**§ 308.50 Suspension and disbarment.**

(a) *Discretionary suspension and disbarment.* (1) The Board may suspend or revoke the privilege of any attorney to appear or practice before the FDIC if, after notice of and opportunity for hearing in the matter, that attorney is found by the Board: (i) Not to possess the requisite qualifications to represent others, (ii) to be seriously lacking in character or integrity or to have engaged in material unethical or improper professional conduct, (iii) to have engaged in, or aided and abetted, a material and knowing violation of the Act, or (iv) to have engaged in contemptuous conduct before the FDIC. Suspension or revocation on the grounds set forth in paragraphs (ii), (iii), and (iv) of this section shall only be ordered upon a further finding that the attorney's conduct or character was sufficiently egregious as to justify suspension or revocation.

(2) Unless otherwise ordered by the Board, an application for reinstatement by a person suspended or disbarred under paragraph (a)(1) of this section may be made in writing at any time more than three years after the effective date of the suspension or disbarment and, thereafter, at any time more than one year after the person's most recent application for reinstatement. The

suspension or disbarment shall continue until the applicant has been reinstated by the Board for good cause shown or until, in the case of a suspension, the suspension period has expired. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(b) *Mandatory suspension and disbarment.* (1) Any attorney who has been and remains suspended or disbarred by a court of the United States or of any state, territory, district, commonwealth, or possession; or any person who has been and remains suspended or barred from practice before the Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Home Loan Bank Board, the Securities and Exchange Commission, or the Commodity Futures Trading Commission; or any person who has been convicted of a felony, or of a misdemeanor involving moral turpitude, within the last ten years, shall be suspended automatically from appearing or practicing before the FDIC. A disbarment, suspension, or conviction within the meaning of this paragraph (b) shall be deemed to have occurred when the disbarring, suspending, or convicting agency or tribunal enters its judgment or order, regardless of whether an appeal is pending or could be taken, and includes a judgment or an order on a plea of nolo contendere or on consent, regardless of whether a violation is admitted in the consent.

(a) Any person appearing or practicing before the FDIC who is the subject of an order, judgment, decree, or finding of the types set forth in paragraph (b)(1) of this section shall promptly file with the Executive Secretary a copy thereof, together with any related opinion or statement of the agency or tribunal involved. Failure to file any such paper shall not impair the operation of any other provision of this section.

(3) A suspension or disbarment under paragraph (b)(1) of this section from practice before the FDIC shall continue until the applicant has been reinstated by the Board for good cause shown, provided that any person suspended or disbarred under paragraph (b)(1) of this section shall be automatically reinstated by the Executive Secretary, upon appropriate application, if all the grounds for suspension under the provisions of that paragraph are subsequently removed by a reversal of the conviction (or the passage of time since the conviction) or termination of the underlying suspension or disbarment. An application for reinstatement on any other grounds by any person suspended or disbarred under paragraph (b)(1) of this section may be filed at any time not less than one year after the applicant's most recent application. An applicant for reinstatement under this provision may, in the Board's sole discretion, be afforded a hearing.

(c) *Hearings under this section.* Hearings conducted under this section shall be conducted in substantially the same manner as other hearings under this subpart B, provided that in proceedings to terminate existing FDIC suspension or disbarment orders, the person seeking the termination of the order shall bear the burden of going forward with an application and with proof, and that the Board may, in its sole discretion, direct that any proceeding to terminate an existing suspension or disbarment by the FDIC be limited to written submissions.

(d) *Summary suspension for contemptuous conduct.* A finding by the administrative law judge of contemptuous conduct during the course of any proceeding shall be grounds for summary suspension by the administrative law judge of any attorney or other representative from any further participation in that proceeding for the duration of that proceeding.

(e) *Practice defined.* Unless the Board orders otherwise, for the purposes of this section, practicing before the FDIC includes, but is not limited to, (1) transacting any business with the FDIC as an attorney or agent for any other person and (2) the preparation of any statement, opinion, or other paper by any attorney, which statement, opinion, or paper is filed with the FDIC in any registration statement, notification, application, report, or other document, with the consent of such attorney.

## Subpart C—Rules and Procedures Applicable to Proceedings Relating to Disapproval of Acquisition of Control

### § 308.51 Scope.

The rules and procedures in this subpart and subpart B shall apply to proceedings in connection with the disapproval by the Board or its designee of a proposed acquisition of control of an insured nonmember bank.

### § 308.52 Grounds for disapproval.

The following are grounds for disapproval of a proposed acquisition of control of an insured nonmember bank:

(a) The proposed acquisition of control would result in a monopoly or would be in furtherance of any combination or conspiracy to monopolize or attempt to monopolize the banking business in any part of the United States;

(b) The effect of the proposed acquisition of control in any section of the United States may be to substantially lessen competition or to tend to create a monopoly or would in any other manner be in restraint of trade, and the anticompetitive effects of the proposed acquisition of control are not clearly outweighed in the public interest by the probable effect of the transaction in meeting the convenience and needs of the community to be served;

(c) The financial condition of any acquiring person might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(d) The competence, experience, or integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public, to permit such person to control the bank; or

(e) Any acquiring person neglects, fails, or refuses to furnish to the FDIC all the information required by the FDIC.

### § 308.53 Notice of disapproval.

(a) *General rule.* (1) Within three days of the decision by the Board or its designee to disapprove a proposed acquisition of control of an insured nonmember bank, a written notice of disapproval shall be mailed by first class mail to, or otherwise served upon, the party seeking to acquire control.

(2) The notice of disapproval shall (i) state the basis for the disapproval, and (ii) indicate that (A) a hearing may be requested by filing a written request with the Executive Secretary within ten days after service of the notice of disapproval and (B) if a hearing is requested, that an answer to the notice of disapproval, as required by § 308.54, must be filed within twenty days after service of the notice of disapproval.

(b) *Waiver of hearing.* Failure to request a hearing pursuant to this section shall constitute a waiver of the opportunity for a hearing and the notice of disapproval shall constitute a final and unappealable order.

### § 308.54 Answer to notice of disapproval.

(a) *Contents.* An answer to the notice of disapproval of a proposed acquisition of control shall be filed within twenty days after service of the notice of disapproval and shall specifically deny those portions of the notice of disapproval which are disputed. Those portions of the notice of disapproval

which are not specifically denied are deemed admitted by the applicant. Any hearing under this subpart C shall be limited to those parts of the notice of disapproval that are specifically denied.

(b) *Failure to answer.* Failure of a party to file a timely answer pursuant to this section shall be deemed a waiver of the party's right to appear at a hearing and contest the disapproval, and the notice of disapproval shall automatically constitute a final and unappealable order.

## Subpart D—Rules and Procedures Applicable to Proceedings Relating to Assessment of Civil Penalties for Willful Violations of the Change in Bank Control Act

### § 308.55 Scope.

The rules and procedures of this subpart and subpart B shall apply to proceedings to assess civil penalties against any person for willful violation of the Change in Bank Control Act of 1978, or any regulation or order issued pursuant thereto, in connection with the affairs of an insured nonmember bank.

### § 308.56 Assessment of penalties.

(a) *Relevant considerations.* The Board or its designee may, in its discretion, assess civil penalties for willful violations of the Change in Bank Control Act after taking into consideration the gravity of the violation and the Respondent's financial resources, good faith, and any other arguments, information, and data submitted by the Respondent.

(b) *Amount.* The Board or its designee may assess against the Respondent a penalty of not more than $10,000 per day for each day the violation of the Change in Bank Control Act continues.

### § 308.57 Collection of penalties.

The FDIC may collect any civil penalty assessed pursuant to this subpart by agreement with the Respondent, or the FDIC may bring an action against the Respondent to recover the penalty amount in the appropriate United States district court. All penalties collected under this section shall be paid over to the Treasury of the United States.

## Subpart E—Rules and Procedures Applicable to Proceedings for Involuntary Termination of Insured Status

### § 308.58 Scope.

(a) *Involuntary termination of insurance pursuant to section 8(a) of the Act.* The rules and procedures in this subpart and subpart B shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(a) of the Act, 12 U.S.C. 1818(a).

(b) *Involuntary termination of insurance pursuant to section 8(p) of the Act.* The rules and procedures in § 308.63 of this subpart E shall apply to proceedings in connection with the involuntary termination of the insured status of an insured bank or an insured branch of a foreign bank pursuant to section 8(p) of the Act, 12 U.S.C. 1818(p). Subpart B shall not apply to proceedings under section 8(p) of the Act.

### § 308.59 Grounds for termination of insurance.

(a) *General rule.* The following are grounds for involuntary termination of insurance pursuant to section 8(a) of the Act:

(1) An insured bank or its directors or trustees have engaged or are engaging in unsafe or unsound practices in conducting the business of such bank;

(2) An insured bank is in an unsafe or unsound condition such that it should not continue operations as an insured bank; or

(3) An insured bank or its directors or trustees have violated an applicable law, rule, regulation, or order, or any condition imposed in writing by the FDIC in connection with the granting of any application or other request by the bank or have violated any written agreement entered into with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its directors or trustees which would otherwise be a ground for termination of insured status under this section shall be a ground for termination if the Board finds:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia that, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice committed outside the United States, if proven, would adversely affect the insurance risk of the FDIC.

(c) *Failure of foreign bank to secure removal of personnel.* The failure of a foreign bank to comply with any order of removal or prohibition issued by the Board under subpart G or the failure of any person associated with a foreign bank to appear promptly as a party to a proceeding pursuant to subpart G shall be a ground for termination of insurance of deposits in any branch of the bank.

### § 308.60 Order of correction.

(a) *Notice to bank.* (1) Upon a finding by the Board or its designee pursuant to § 308.59 of an unsafe or unsound practice or condition or of a violation, there shall be served upon the insured bank an Order of Correction specifying the findings and ordering correction of the practices, conditions, or violations within one hundred twenty days after receipt of an Order of Correction.

(2) A shorter period of correction of not less than twenty days may be fixed in any case where the Board or its designee, in its discretion, has determined that the insurance risk of the FDIC is unduly jeopardized, or may be fixed by the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, by the state authority in the case of an insured nonmember bank, including an insured State branch of a foreign bank, by the Board of Governors of the Federal Reserve System in the case of a state member bank, or by the Federal Home Loan Bank Board in the case of an insured federal savings bank.

(b) *Notice to supervisory authority.* The Executive Secretary shall also serve the Order of Correction on the Comptroller of the Currency in the case of a national bank, a district bank, or an insured federal branch of a foreign bank, on the Board of Governors of the Federal Reserve System in the case of a state member bank, on the Federal Home Loan Bank Board in the case of an insured federal savings bank, and on the appropriate state supervisory authority in the case of an insured state bank, including a state branch of a foreign bank, for the purpose of securing correction of the practices or violations of the bank or its directors or trustees, or of the condition of the bank.

### § 308.61 Notice of intent to terminate.

Unless correction of the practices, condition, or violations specified in the Order of Correction is made within the time period provided therein, the Board or its designee, if it determines to proceed further, shall cause to be served upon the insured bank a Notice of its intention to terminate insured status not less than thirty days after the service of that Notice.

### § 308.62 Notice to depositors.

If the Board enters an order terminating the insured status of a bank or branch, the bank shall, on the day that order becomes final, or on such other day as that order prescribes, mail a notification of termination of insured status to each depositor at the depositor's last address of record on the

books of the bank or branch. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

1. The status of the _____, as an (insured bank) (insured branch) under the provisions of the Federal Deposit Insurance Act, will terminate as of the close of business on the ____ day of _____, 19____.

2. Any deposits made by you after that date, either new deposits or additions to existing deposits, will not be insured by the Federal Deposit Insurance Corporation.

3. Insured deposits in the (bank) (branch) on the ____ day of _____, 19____, will continue to be insured, as provided by the Federal Deposit Insurance Act, for 2 years after the close of business on the ____ day of _____, 19____. Provided, however, that any withdrawals after the close of business on the ____ day of _____, 19____, will reduce the insurance coverage by the amount of such withdrawals.

_____

(Name of bank or branch)

_____

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

**§ 308.63 Involuntary termination of insured status for failure to receive deposits.**

(a) *Notice to show cause.* When the Board or its designee has evidence that an insured bank is not engaged in the business of receiving deposits, other than trust funds, the Board or its designee shall be given written notice of this evidence to the bank and shall direct the bank to show cause why its insured status should not be terminated under the provisions of section 8(p) of the Act. The bank shall have thirty days after receipt of the notice, or such longer period as is prescribed in the notice, to submit affidavits, other written proof, and any legal arguments that it is engaged in the business of receiving deposits other than trust funds.

(b) *Notice of termination date.* If, upon consideration of the affidavits, other written proof, and legal arguments, the Board determines that the bank is not engaged in the business of receiving deposits, other than trust funds, the finding shall be conclusive and the Board shall notify the bank that its insured status will terminate at the expiration of the first full semiannual assessment period following issuance of that notification.

(c) *Notification to depositors of termination of insured status.* Within the time specified by the Board and prior to the date of termination of its insured status, the bank shall mail a notification of termination of insured status to each depositor at the depositor's last address of record on the books of the bank. The bank shall also publish the notification in two issues of a local newspaper of general circulation and shall furnish the FDIC with proof of such publications. The notification to depositors shall include information provided in substantially the following form:

Notice

(Date)_____.

The status of the _____ as an (insured bank) (insured branch) under the Federal Deposit Insurance Act, will terminate on the ____ day of _____, 19____, and its deposits will thereupon cease to be insured.

_____

(Name of bank or branch)

_____

(Address)

The notification may include any additional information the bank deems advisable, provided that the information required by this section shall be set forth in a conspicuous manner on the first page of the notification.

## Subpart F—Rules and Procedures Applicable to Proceedings Relating to Cease-and-Desist Orders

**§ 308.64 Scope.**

(a) *Cease-and-desist proceedings under section 8 of the Act.* The rules and procedures of this subpart and subpart B shall apply to proceedings to order an insured nonmember bank or its official to cease and desist from practices and violations described in section 8(b) of the Act, provided that the provisions of subpart B shall not apply to the issuance of temporary cease-and-desist orders pursuant to section 8(c) of the Act.

(b) *Proceedings under the Securities Act of 1934.* (1) The rules and procedures of this subpart and subpart B shall apply to proceedings by the Board to order a municipal securities dealer or a person associated with a municipal securities dealer to cease and desist from any violation of law or regulation specified in section 15B(c)(5) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 780–4(c)(5), where the municipal securities dealer is an insured nonmember bank or a subsidiary thereof.

(2) The rules and procedures of this subpart and subpart B shall apply to proceedings by the Board to order a clearing agency or transfer agent to cease and desist from failure to comply with the applicable provisions of sections 17, 17A, and 19 of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78q, 78q–1, 78s, and the applicable rules and regulations thereunder, where the clearing agency or transfer agent is an insured nonmember bank or a subsidiary thereof.

**§ 308.65 Grounds for cease-and-desist orders.**

(a) *General Rule.* The Board or its designee may issue and have served upon any insured nonmember bank or its official a Notice, as described in section 308.20 of subpart B, if:

(1) In the opinion of the Board or its designee the bank or official is engaging or has engaged in an unsafe or unsound practice;

(2) The Board or its designee has reasonable cause to believe the bank or official is about to engage in an unsafe or unsound practice in conducting the business of such bank; or

(3) In the opinion of the Board or its designee, the bank or official has violated, or there is reasonable cause to believe that the bank or official is about to violate, a law, rule, or regulation, or any condition the FDIC has imposed in writing in connection with granting an application or other request by the bank, or any written agreement with the FDIC.

(b) *Extraterritorial acts of foreign banks.* An act or practice committed outside the United States by a foreign bank or its official that would otherwise be a ground for issuing a cease-and-desist order under paragraph (a) of this section or a temporary cease-and-desist order under § 308.68 of this subpart, shall be a ground for an order if the Board or its designee finds that:

(1) The act or practice has been, is, or is likely to be a cause of, or carried on in connection with or in furtherance of, an act or practice committed within any state, territory, or possession of the United States or the District of Columbia which act or practice, in and of itself, would be an appropriate basis for action by the FDIC; or

(2) The act or practice, if proven, would adversely affect the insurance risk of the FDIC.

**§ 308.66 Notice to state supervisory authority.**

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to subpart F, and the grounds thereof. Any proceedings shall be conducted according to subpart F, unless, within the time period specified in such notification, the state supervisory authority has effected satisfactory corrective action.

**§ 308.67 Effective date of order and service on bank.**

(a) *Effective date.* A cease-and-desist order issued by the Board after a hearing, and a cease-and-desist order issued based upon a default, shall become effective at the expiration of thirty days after the service of the order upon the bank or its official. A cease-and-desist order issued upon consent shall become effective at the time specified therein. All cease-and-desist orders shall remain effective and enforceable, except to the extent they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

(b) *Service on banks.* In cases where the bank is not the Respondent, the cease-and-desist order shall also be served upon the bank.

**§ 308.68 Temporary cease-and-desist order.**

(a) *Issuance.* (1) When the Board or its designee determines that the violation, threatened violation, or the unsafe or unsound practice, as specified in the Notice, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the bank, or is likely to seriously weaken the condition of the bank of otherwise seriously prejudice the interests of its depositors prior to the completion of the proceedings under section 8(b) of the Act and § 308.65 of this subpart, the Board or its designee may issue a temporary order requiring the bank or its official to immediately cease and desist from any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of the proceedings under section 8(b) of the Act.

(2) The temporary order shall be served upon the bank or official named therein and shall also be served upon the bank in the case where the temporary order applies only to an official of the bank.

(b) *Effective date.* A temporary order shall become effective when served upon the bank or its official. Unless the temporary order is set aside, limited, or suspended by a court in proceedings authorized under section 8(c)(2) of the Act, the temporary order shall remain effective and enforceable pending completion of administrative proceedings pursuant to section 8(b) of the Act and entry of an order which has become final.

(c) *Subpart B does not apply.* The provisions of subpart B shall not apply to the issuance of temporary orders under this section.

## Subpart G—Rules and Procedures Applicable to Proceedings Relating to Removal and Suspension Orders

**§ 308.69 Scope.**

The rules and procedures of this subpart and subpart B shall apply to proceedings to remove, or prohibit from further participation in the conduct of the affairs of a bank as provided in section 8(e) of the Act, 12 U.S.C. 1818(e), any director, officer, or other person participating in the conduct of the affairs of an insured nonmember bank, provided that the provisions of subpart B shall not apply to issuance of a temporary suspension order pursuant to section 8(e)(4) of the Act.

**§ 308.70 Grounds for removal or prohibition.**

(a) *Removal of director or officer.* The Board or its designee may issue and have served upon a director or officer of any insured nonmember bank and on such bank a Notice of intent to remove a director or officer from office when in the opinion of the Board or its designee:

(1) (i) The director or officer has committed any violation of law, rule, regulation, or of a cease-and-desist order which has become final; or has engaged or participated in any unsafe or unsound practice in connection with the bank; or has committed or engaged in any act, omission, or practice which constitutes a breach of fiduciary duty as a director or officer;

(ii) The violation, practice, or breach of fiduciary duty is one involving personal dishonesty on the part of such director or officer, or is one which demonstrates the director's or officer's willful or continuing disregard for the safety or soundness of the bank; and

(iii) The bank has suffered or will probably suffer substantial financial loss or other damage, or the interests of its depositors could be seriously prejudiced by reason of such violation, practice, or breach of fiduciary duty, or the director or officer has received financial gain by reason of such violation, practice, or breach of fiduciary duty; or

(2) The director or officer:

(i) Has engaged in conduct or practices with respect to another insured bank or other business institution that resulted in substantial financial loss or other damage;

(ii) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(iii) Has evidenced unfitness to continue as a director or officer of an insured bank; or

(3) The director or officer has committed any violation of the Depository Institution Management Interlocks Act.

(b) *Prohibition of person who has participated in conduct of bank.* The Board or its designee may issue, and have served upon any person who has participated in the conduct of the affairs of an insured nonmember bank, a Notice of intention to prohibit the individual's further participation in any manner in the conduct of the affairs of the bank when in the opinion of the Board or its designee the individual;

(1) Has engaged in conduct or practices with respect to such bank or other insured bank or other business institution that resulted in substantial financial loss or other damage;

(2) Has evidenced either personal dishonesty or a willful or continuing disregard for the safety or soundness of the previously affected institution or of the subject insured bank; and

(3) Has evidenced unfitness to participate in the conduct of the affairs of an insured bank.

**§ 308.71 Notice to state supervisory authority.**

The Board or its designee shall give the appropriate state supervisory authority notification of its intent to institute a proceeding pursuant to this subpart G, and the grounds therefor. The proceeding shall be conducted according to this subpart G unless within the time specified in such notification, the state supervisory authority has effected satisfactory corrective action.

**§ 308.72 Effective date of removal or prohibition order.**

An order of removal or prohibition issued by the Board after a hearing, and an order of removal or prohibition issued on default, shall become effective at the expiration of thirty days after the service of the order upon the Respondent and the bank. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and

enforceable, except to the extent that they are stayed, modified, terminated, or set aside by the Board or its designee or by a reviewing court.

**§ 308.73 Temporary suspension order.**

(a) *Issuance.* (1) The Board may suspend from office or prohibit from further participation in the conduct of the affairs of an insured nonmember bank, a director, an officer, or any other person participating in the conduct of the affairs of such bank pending the completion of the proceeding initiated by the Notice issued pursuant to section 8(e)(1)(2) of the Act and section 308.70 of this subpart G when the Board deems the suspension necessary for the protection of the bank or the interests of its depositors.

(2) The temporary suspension order shall be served upon the individual being suspended or prohibited and upon the bank.

(b) *Effective date.* A suspension or prohibition shall become effective when served upon the individual being suspended or prohibited. Unless set aside, limited, or suspended by a court in proceedings authorized by the Act, the temporary suspension order shall remain effective and enforceable pending completion of the administrative proceedings and entry of an order which has become final pursuant to the provisions of section 8(e)(5) of the Act.

(c) *Subpart B does not apply.* The provision of subpart B shall not apply to the issuance of temporary suspension orders under this section.

## Subpart H—Rules and Procedures Applicable to Proceedings Relating to Assessment and Collection of Civil Penalties for the Violation of Cease-and-Desist Orders and of Certain Federal Statutes

**§ 308.74 Scope.**

(a) *General rule.* The rules and procedures in this subpart and subpart B shall apply to proceedings to assess and collect civil penalties from:

(1) An insured nonmember bank or its official where the bank or official has violated the terms of any order which has become final and was issued pursuant to section 8(b)(c) or (s) of the Act;

(2) An insured nonmember bank or its official where the bank or official has violated the provisions of section 22(h), 23A, or 23B of the Federal Reserve Act, 12 U.S.C. 375b, 371c, or 371c–1 or any rule or regulation promulgated thereunder;

(3) An insured nonmember bank or its official where the bank or official has violated the provisions of section 106(b)(2) of the Bank Holding Company Act, as amended, 12 U.S.C. 1972(2), or any rule or regulation promulgated thereunder; or

(4) An insured nonmember bank or its official where the bank or official has violated the provisions of Chapter 40 of Title 12 of the United States Code, or any rule, regulation, or order issued thereunder by the FDIC.

(b) *Definition of "has violated".* As used in this subpart, the term "has violated" includes, but is not limited to, any action, alone or with others, for or towards causing, bringing about, participating in, counseling, or aiding or abetting a violation.

**§ 308.75 Assessment of penalties.**

(a) *Assessment.* The civil penalty shall be assessed upon service of the Notice of Assessment and shall automatically become final and unappealable unless the Respondent both (1) requests a hearing pursuant to the provisions of § 308.20 and (2) answers the Notice pursuant to the provisions of § 308.21 of subpart B.

(b) *Relevant considerations.* In determining the amount of the civil penalty to be assessed, the Board or its designee shall consider the financial resources and good faith of the bank or official, the gravity of the violation, the history of previous violations, and any such other matters as justice may require.

(c) *Amount.* The Board or its designee may assess upon the bank or official a civil penalty of not more than $1,000 per day for each day the violation of an order or statute specified in § 308.74 of this subpart continues.

**§ 308.76 Effective date of, and payment under, an order to pay.**

(a) *Effective date.* (1) Unless otherwise provided in the Notice, except in situations covered by paragraph (a)(2) of this section, civil penalties assessed pursuant to this subpart are due and payable sixty days after the Notice is served upon the Respondent.

(2) If the Respondent both requests a hearing and serves an answer, civil penalties assessed pursuant to this subpart are due and payable sixty days after an order to pay, issued after the hearing or upon default, is served upon the Respondent, unless the order provides for a different period of payment. Civil penalties assessed pursuant to an order to pay issued upon consent are due and payable within the time specified therein.

(b) *Payment.* All penalties collected under this section shall be paid over to the Treasury of the United States.

## Subpart I—Rules and Procedures for Imposition of Sanctions Upon Municipal Securities Dealers or Persons Associated With Them and Clearing Agencies or Transfer Agents

**§ 308.77 Scope.**

The rules and procedures in this subpart and subpart B shall apply to proceedings by the Board or its designee:

(a) To censure, limit the activities of, suspend, or revoke the registration of, any municipal securities dealer for which the FDIC is the appropriate regulatory agency;

(b) To censure, suspend, or bar from being associated with such a municipal securities dealer, any person associated with such a municipal securities dealer; and

(c) To deny registration to, censure, limit the activities of, suspend, or revoke the registration of, any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency.

This subpart and subpart B shall not apply to proceedings to postpone or suspend registration of a transfer agent or clearing agency pending final determination of denial or revocation of registration.

**§ 308.78 Grounds for imposition of sanctions.**

(a) *Action under section 15(b)(4) of the Securities Exchange Act of 1934.* The Board or its designee may issue and have served upon any municipal securities dealer for which the FDIC is the appropriate regulatory agency, or any person associated or seeking to become associated with a municipal securities dealer for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to censure, limit the activities or functions or operations of, suspend, or revoke the registration of, such municipal securities dealer, or to censure, suspend, or bar the person from being associated with the municipal securities dealer, when the Board or its designee determines:

(1) That such municipal securities dealer or such person (i) has committed any prohibited act or omitted any required act specified in subparagraph (A), (D), or (E) of section 15(b)(4) of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78o), (ii) has been convicted of any offense specified in section 15(b)(4)(B) of that act within 10 years of commencement of proceedings under this subpart, or (iii) is enjoined from any act, conduct, or practice specified in section 15(b)(4)(C) of that act; and

(2) That is in the public interest to impose any of the sanctions set forth in paragraph (a) of this section.

(b) *Action under sections 17 and 17A of Securities Exchange Act of 1934.* The Board or its designee may issue, and have served upon any transfer agent or clearing agency for which the FDIC is the appropriate regulatory agency, a written Notice of its intention to deny registration to, censure, place limitations on the activities or functions or operations of, suspend, or revoke the registration of, the transfer agent or clearing agency, when the Board or its designee determines:

(1) That the transfer agent or clearing agency has willfully violated, or is unable to comply with, any applicable provision of section 17 or 17A of the Securities Exchange Act of 1934, as amended, or any applicable rule or regulation issued pursuant thereto; and

(2) That it is in the public interest to impose any of the sanctions set forth in paragraph (b) in this section.

**§ 308.79 Notice to and consultation with the Securities and Exchange Commission.**

Before initiating any proceedings under § 308.78, the FDIC shall: (a) notify the Securities and Exchange Commission of the identity of the municipal securities dealer or associated person against whom proceedings are to be initiated, and the nature of and basis for the proposed action; and (b) consult with the Commission concerning the effect of the proposed action on the protection of investors and the possibility of coordinating the action with any proceeding by the Commission against the municipal securities dealer or associated person.

**§ 308.80 Effective date of order imposing sanctions.**

An order issued by the Board after a hearing or an order issued upon a default shall become effective at the expiration of thirty days after the service of the order, except that an order of censure, denial, or revocation of registration is effective when served. An order issued upon consent shall become effective at the time specified therein. All orders shall remain effective and enforceable except to the extent they are stayed, modified, terminated, or set aside by the Board, its designee, or a reviewing court, provided that orders of suspension shall continue in effect no longer than twelve months.

## Subpart J—Rules and Procedures Relating to Exemption Proceedings Under Section 12(h) of the Securities Exchange Act of 1934

**§ 308.81 Scope.**

The rules and procedures of this subpart J shall apply to proceedings by the Board or its designee to exempt, in whole or in part, an issuer of securities from the provisions of sections 12(g), 13, 14(a), 14(c), 14(d), or 14(f) of the Securities Exchange Act of 1934, as amended, 15 U.S.C. 78l, 78m, 78n(a), (c) (d) or (f), or to exempt an officer or a director or beneficial owner of securities of such an issuer from the provisions of section 16 of that act, 15 U.S.C. 78p.

**§ 308.82 Application for exemption.**

Any interested person may file a written application for an exemption under this subpart with the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. The application shall specify the exemption sought and the reason therefor, and shall include a statement indicating why the exemption would be consistent with the public interest or the protection of investors.

**§ 308.83 Newspaper notice.**

(a) *General rule.* If the Board or its designee, in its sole discretion, decides to further consider an application for exemption, there shall be served upon the applicant instructions to publish one notification in a newspaper of general circulation in the community where the main office of the issuer is located. The applicant shall furnish proof of such publication to the Executive Secretary or such other person as may be directed in the instructions.

(b) *Contents.* The notification shall contain (1) the name and address of the issuer and the name and title of the applicant, (2) the exemption sought, (3) a statement that a hearing will be held, and (4) a statement that within thirty days of publication of the newspaper notice, interested persons may submit to the FDIC written comments on the application for exemption and a written request for an opportunity to be heard. The address of the FDIC must appear in the notice.

**§ 308.84 Notice of hearing.**

Within ten days after expiration of the period for receipt of comments pursuant to § 308.83, the Executive Secretary shall serve upon the applicant and any person who has requested an opportunity to be heard written notification indicating the place and time of the hearing. The hearing shall be held not later than thirty days after service of the notification of hearing. The notification shall contain the name and address of the presiding officer designated by the Executive Secretary and a statement of the matters to be considered.

**§ 308.85 Hearing.**

(a) *Proceedings are informal.* Formal rules of evidence, the adjudicative procedures of the Administrative Procedures Act (5 U.S.C. 554–557), and subpart B shall not apply to hearings under this subpart.

(b) *Hearing procedure.* (1) Parties to the hearing may appear personally or through counsel and shall have the right to introduce relevant and material documents and to make an oral statement.

(2) The presiding officer shall have discretion to permit presentation of witnesses within specified time limits, provided that a list of witnesses is furnished to the presiding officer prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness and each party may cross-examine any witness presented by an opposing party.

(3) The proceedings shall be recorded and the transcript shall be promptly submitted to the Board. If the hearing is conducted by a presiding officer other than one or more members of the Board, the presiding officer shall make recommendations to the Board, unless the Board, in its sole discretion, directs otherwise.

**§ 308.86 Decision of Board.**

Following submission of the hearing transcript to the Board, the Board may grant the exemption where it determines, by reason of the number of public investors, the amount of trading interest in the securities, the nature and extent of the issuer's activities, the issuer's income or assets, or otherwise, that the exemption is consistent with the public interest or the protection of investors. Any exemption shall be set forth in an order specifying the terms of the exemption, the person to whom it is granted, and the period for which it is granted. A copy of the order shall be served upon each party to the proceeding.

## Subpart K—Procedures Applicable to Investigations Pursuant to Section 10(c) of the Act

**§ 308.87 Scope.**

The procedures of this subpart shall be followed when an investigation is instituted and conducted in connection with any open or failed insured bank, any institutions making application to

become insured banks, and affiliates thereof, or with other types of investigations to determine compliance with applicable law and regulations, pursuant to section 10(c) of the Act, 12 U.S.C. section 1820(c). Subpart B shall not apply to investigations under this subpart.

**§ 308.88 Conduct of investigation.**

An investigation conducted pursuant to section 10(c) of the Act shall be initiated only upon issuance of an order by the Board, or by the General Counsel or designee thereof, the Director of the Division of Bank Supervision or designee thereof or the Director of the Division of Liquidation or designee thereof. The order shall indicate the purpose of the investigation and designate FDIC's representative(s) to direct the conduct of the investigation. Upon application and for good cause shown, the persons who issue the order of investigation may limit, quash, modify, or withdraw it. Upon the conclusion of the investigation, an order of termination of the investigation shall be issued by the persons issuing the order of investigation.

**§ 308.89 Powers of person conducting investigation.**

The person designated to conduct a section 10(c) investigation shall have the power, among other things, to administer oaths and affirmations, to take and preserve testimony under oath, to issue subpoenas and subpoenas duces tecum and to apply for their enforcement to the United States District Court for the judicial district or the United States court in any territory in which the main office of the bank, institution, or affiliate is located or in which the witness resides or conducts business. The person conducting the investigation may obtain the assistance of counsel or others from both within and outside the FDIC. The persons who issue the order of investigation may limit, quash, or modify any subpoena or subpoena duces tecum, upon application and for good cause shown. The person conducting an investigation may report to the Board any instance where any attorney has been guilty of contemptuous conduct. The Board, upon motion of the person conducting the investigation, or on its own motion, may make a finding of contempt and may then summarily suspend, without a hearing, any attorney representing a witness from further participation in the investigation.

**§ 308.90 Investigations confidential.**

Investigations conducted pursuant to section 10(c) shall be confidential. Information and documents obtained by the FDIC in the course of such investigations shall not be disclosed, except as provided in Part 309 of the FDIC's rules and regulations and as otherwise required by law.

**§ 308.91 Rights of witnesses.**

In an investigation pursuant to section 10(c) of the Act:

(a) Any person compelled or requested to furnish testimony, documentary evidence, or other information, shall upon request be shown and provided with a copy of the order initiating the proceeding;

(b) Any person compelled or requested to provide testimony as a witness or to furnish documentary evidence may be represented by an attorney who meets the requirements of § 308.08(c). That attorney may be present and may: (1) Advise the witness before, during, and after such testimony; (2) briefly question the witness at the conclusion of such testimony for clarification purposes; and (3) make summary notes during such testimony solely for the use and benefit of the witness;

(c) All persons testifying shall be sequestered. Such persons and their counsel shall not be present during the testimony of any other person, unless permitted in the discretion of the person conducting the investigation;

(d) In cases of a perceived or actual conflict of interest arising out of an attorney's or law firm's representation of multiple witnesses, the person conducting the investigation may require the attorney to comply with the provisions of section 308.47(b) of subpart B; and

(e) Witness fees shall be paid in accordance with section 308.16 of subpart B.

**§ 308.92 Service of subpoena.**

Service of a subpoena shall be accomplished in accordance with section 308.13 of subpart B.

**§ 308.93 Transcripts.**

(a) *General rule.* Transcripts of testimony, if any, in an investigation pursuant to section 10(c) shall be recorded by an official reporter, or by any other person or means designated by the person conducting the investigation. A witness may, solely for the use and benefit of the witness, obtain a copy of the transcript of his or her testimony at the conclusion of the investigation or, at the discretion of the person conducting the investigation, at an earlier time, provided the transcript is available. The witness requesting a copy of his or her testimony shall bear the cost thereof.

(b) *Subscription by witness.* The transcript of testimony shall be subscribed by the witness, unless the person conducting the investigation and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the transcript of the testimony is not subscribed by the witness, the official reporter taking the testimony shall certify that the transcript is a true and complete transcript of the testimony.

## Subpart L—Reserved

## Subpart M—Procedures and Standards Applicable to an Application Pursuant to Section 19 of the Act

**§ 308.99 Scope.**

The rules and procedures set forth in this subpart shall apply to the application by an insured bank or an individual under section 19 of the Act, 12 U.S.C. 1829, to engage the services of an individual who has been convicted of any criminal offense involving dishonesty or a breach of trust.

**§ 308.100 Relevant considerations.**

(a) In proceedings under § 308.99 on an application to participate in the conduct of the affairs of a bank, the following shall be considered:

(1) Whether the conviction is for a criminal offense, either misdemeanor or felony, involving dishonesty or breach of trust;

(2) Whether service of the individual in the proposed bank constitutes a threat to the safety or soundness of the bank or the interests of its depositors, or threatens to impair public confidence in the bank;

(3) Evidence of the applicant's rehabilitation;

(4) The position to be held by the applicant;

(5) The amount of influence and control the applicant will be able to exercise over the affairs and operations of the insured bank;

(6) The ability of the management at the bank to supervise and control the activities of the applicant;

(7) The level of ownership which the applicant will have at the insured bank;

(8) Applicable fidelity bond coverage for the applicant;

(9) Additional factors in the specific case that appear relevant.

(b) The question of whether an individual convicted of a crime was guilty of that crime shall not be at issue in a proceeding under this subpart.

**§ 308.101 Filing papers and effective date.**

(a) *Filing with the Regional Office.* Applications pursuant to section 19 of the Act shall be filed in the appropriate regional office.

(b) *Effective date.* An application pursuant to section 19 of the Act may be made in writing at any time more than three years after the effective date of the conviction of a criminal offense involving dishonesty or a breach of trust. At any time more than one year after the issuance of a decision denying an application pursuant to section 19 of the Act, a new application to participate in the conduct of the affairs of the bank may be made. The removal and/or prohibition pursuant to section 19 of the Act shall continue until the applicant has been reinstated by the Board or its designee for good cause shown.

**§ 308.102 Denial of applications.**

A denial of an application pursuant to section 19 of the Act shall:

(a) Inform the applicant that a written request for a hearing, stating the relief desired and the grounds therefor and any supporting evidence, may be filed with the Executive Secretary within thirty days after the denial; and

(b) Summarize or cite the relevant considerations specified in § 308.100 of this subpart.

**§ 308.103 Hearings.**

(a) *Hearing dates.* The Board, or its designee, in its sole discretion, shall determine whether to grant a hearing on the application. If a hearing is granted, the Executive Secretary shall order a hearing to be commenced within sixty days after receipt of a request for hearing on an application filed pursuant to § 308.99(a). Upon the request of the applicant, or FDIC enforcement counsel, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of § 308.08, 308.10, 308.14 and 308.18 of subpart B shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart, the balance of subpart B shall not apply to such hearings.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart M.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with section 308.16 of subpart B.

(7) Upon the request of the applicant afforded the hearing, or FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board, where possible, within twenty days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board or its designee. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the individual shall remain barred under section 19.

(e) *Decision by Board or its designee.* Within sixty days followig the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the individual shall remain barred under section 19. The notification shall state the basis for any decision of the Board or its designee that is adverse to the applicant.

## Subpart N—Rules and Procedures Applicable to Proceedings Relating to Suspension, Removal, and Prohibition Where a Felony Is Charged

**§ 308.104 Scope.**

The rules and procedures set forth in this section shall apply to the following proceedings:

(a) To suspend any director, officer or other person participating in the conduct of the affairs of an insured state nonmember bank, or to prohibit such individuals from further participation in the conduct of the affairs of the bank, where the individual is charged in any state, federal, or territorial information or indictment, or charged in any complaint authorized by a United States attorney, with the commission of, or participating in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law; or

(b) To remove from office any director, officer, or other person, or to prohibit any person from further participation in the conduct of the affairs of the bank, except with the consent of the Board or its designee, where a judgment of conviction not subject to further appellate review has been entered against the individual for the commission of, or participation in, a crime involving dishonesty or breach of trust punishable by imprisonment exceeding one year under state or federal law.

**§ 308.105 Relevant considerations**

(a) In proceedings under § 308.104 (a) and (b) for a suspension, removal or prohibition order, the following shall be considered:

(1) Whether the alleged offense is a crime which is punishable by imprisonment for a term exceeding one year under state or federal law, and which involves dishonesty or breach of trust, and

(2) Whether continued service or participation by the individual may pose a threat to the interest of the bank's depositors, or threatens to impair public confidence in the bank.

(3) Additional factors in the specific case that appear relevant to its decision

to continue in effect, rescind, terminate, or modify a suspension, removal or prohibition order may be considered.

(b) The question of whether an individual charged with a crime is guilty of the crime charged shall not be tried or considered in a proceeding under this subpart.

**§ 308.106 Notice of suspension, and orders of removal or prohibition.**

(a) *Notice of suspension or prohibition.* (1) The Board or its designee may suspend or prohibit from further participation in the conduct of the affairs of the bank a director, an officer, or other person participating in the conduct of the affairs of the bank by written notice of suspension or prohibition upon a determination by the Board or its designee that the grounds for such suspension or prohibition exist. The written notice of suspension or prohibition shall be served upon the individual and the bank.

(2) The written notice of suspension shall:

(i) Inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the written notice; and

(ii) Summarize or cite to the relevant considerations specified in § 308.105 of this subpart.

(3) The suspension or prohibition shall be effective immediately upon service on the individual, and shall remain in effect until final disposition of the information, indictment, complaint, or until it is terminated by the Board or its designee under the provisions of section 308.107 or section 308.108 or otherwise.

(b) *Order of removal or prohibition.*

(1) The Board or its designee may issue an order removing or prohibiting from further participation in the conduct of the affairs of the bank a director, officer, or other person participating in the conduct of the affairs of the bank, when:

(i) A final judgment of conviction not subject to further appellate review is entered against the individual for a crime referred to in § 308.104(b); and

(ii) The Board or its designee determines that continued service or participation of the individual may threaten the interests of the bank's depositors or may threaten to impair public confidence in the bank.

(2) The order shall be served upon the individual and the bank.

(3) The order shall:

(i) Inform the individual that a written request for a hearing, stating the relief desired and grounds therefor, and any supporting evidence, may be filed with the Executive Secretary within thirty days after receipt of the order; and

(ii) Summarize or cite the relevant considerations specified in § 308.105 of this subpart.

(4) The order shall be effective immediately upon service on the individual, and shall remain in effect until it is terminated by the Board or its designee under the provisions of § 308.107 or § 308.109 or otherwise.

**§ 308.107 Hearings.**

(a) *Hearing dates.* The Executive Secretary shall order a hearing to be commenced within thirty days after receipt of a request for hearing on an application filed pursuant to § 308.106. Upon the request of the applicant, the presiding officer or the Executive Secretary may order a later hearing date.

(b) *Hearing procedure.* (1) The hearing shall be held in Washington, DC, or at another designated place, before a presiding officer designated by the Executive Secretary.

(2) The provisions of §§ 308.08, 308.10, 308.14 and 308.18 of subpart B shall apply to hearings held pursuant to this section, but except as expressly provided in this subpart, the balance of subpart B shall not apply to such hearings.

(3) The applicant may appear at the hearing and shall have the right to introduce relevant and material documents and oral argument. Members of the FDIC enforcement staff may attend the hearing and participate as a party.

(4) There shall be no discovery in proceedings under this subpart N.

(5) At the discretion of the presiding officer, witnesses may be presented within specified time limits, provided that a list of witnesses is furnished to the presiding officer and to all other parties prior to the hearing. Witnesses shall be sworn, unless otherwise directed by the presiding officer. The presiding officer may ask questions of any witness. Each party shall have the opportunity to cross-examine any witness presented by an opposing party. The transcript of the proceedings shall be furnished, upon request and payment of the cost thereof, to the applicant afforded the hearing.

(6) In the course of or in connection with any hearing under this subsection, the presiding officer shall have the power to administer oaths and affirmations, to take or cause to be taken depositions of unavailable witnesses, and to issue, revoke, quash, or modify subpoenas and subpoenas duces tecum. Where the presentation of witnesses is permitted, the presiding officer may require the attendance of witnesses from any state, territory, or other place subject to the jurisdiction of the United States at any location where the proceeding is being conducted. Witness fees shall be paid in accordance with § 308.16 of subpart B.

(7) Upon the request of the applicant afforded the hearing, or the members of the FDIC enforcement staff, the record shall remain open for five business days following the hearing for the parties to make additional submissions to the record.

(8) The presiding officer shall make recommendations to the Board, where possible, within ten days after the last day for the parties to submit additions to the record.

(9) The presiding officer shall forward his or her recommendation to the Executive Secretary who shall promptly certify the entire record, including the recommendation to the Board. The Executive Secretary's certification shall close the record.

(c) *Written submissions in lieu of hearing.* The applicant or the bank may in writing waive a hearing and elect to have the matter determined on the basis of written submissions.

(d) *Failure to request or appear at hearing.* Failure to request a hearing shall constitute a waiver of the opportunity for a hearing. Failure to appear at a hearing in person or through an authorized representative shall constitute a waiver of hearing. If a hearing is waived, the order shall be final and unappealable, and shall remain in full force and effect pursuant to § 308.97

(e) *Decision by Board or its designee.* Within sixty days following the Executive Secretary's certification of the record to the Board or its designee, the Board or its designee shall notify the affected individual whether the order of removal or prohibition will be continued, terminated, or otherwise modified. The notification shall state the basis for any decision of the Board or its designee that is adverse to the applicant. The Board or its designee shall promptly rescind or modify an order of removal or prohibition where the decision is favorable to the applicant.

## Subpart O—[Reserved]

## Subpart P—Rules and Procedures Relating to the Recovery of Attorney Fees and Other Expenses

### § 308.113 Scope.

This subpart, and the Equal Access to Justice Act (5 U.S.C. section 504), which it implements, apply to adversary adjudications before the FDIC. The types of adjudication covered by this subpart are those listed in § 308.04 of subpart B. Subpart B does not apply to any proceedings to recover fees and expenses under this subpart.

### § 308.114 Filing, content, and service of documents.

(a) *Time to file.* An application and any other pleading or document related to the application may be filed with the Executive Secretary whenever the applicant has prevailed in the proceeding or in a discrete significant substantive portion of the proceeding within thirty days after service of the final order of the Board in disposition of the proceeding.

(b) *Content.* The application and related documents shall conform to the requirements of § 308.12 of subpart B.

(c) *Service.* The application and related documents shall be served on all parties to the adversary adjudication in accordance with § 308.13 of subpart B, except that statements of net worth shall be served only on counsel for the FDIC.

(d) Upon receipt of an application, the Executive Secretary shall refer the matter to the administrative law judge who heard the underlying adversary proceeding, provided that if the original administrative law judge is unavailable, or the Executive Secretary determines, in his or her sole discretion, that there is cause to refer the matter to a different administrative law judge, the matter shall be referred to a different administrative law judge.

### § 308.115 Responses to application.

(a) *By FDIC.* (1) Within twenty days after service of an application, counsel for the FDIC may file with the Executive Secretary and serve on all parties an answer to the application. Unless counsel for the FDIC requests and is granted an extension of time for filing or files a statement of intent to negotiate under § 308.110 of this subpart, failure to file an answer within the twenty-day period will be treated as a consent to the award requested.

(2) The answer shall explain in detail any objections to the award requested and identify the facts relied on in support of the FDIC's position. If the answer is based on any alleged facts not already in the record of the proceeding, the answer shall include either supporting affidavits or a request for further proceedings under § 308.111.

(b) *Reply to answer.* The applicant may file a reply if the FDIC has addressed in its answer any of the following issues: that the position of the FDIC was substantially justified, that the applicant unduly protracted the proceedings, or that special circumstances make an award unjust. The reply shall be filed within fifteen days after service of the answer. If the reply is based on any alleged facts not already in the record of the proceeding, the reply shall include either supporting affidavits or a request for further proceedings under § 308.111.

(c) *By other parties.* Any party to the adversary adjudication, other than the applicant and the FDIC, may file comments on an application within twenty days after service of the application. If the applicant is entitled to file a reply to the FDIC's answer under paragraph (b) of this section, another party may file comments on the answer within fifteen days after service of the answer. A commenting party may not participate in any further proceedings on the application unless the administrative law judge determines that the public interest requires such participation in order to permit additional exploration of matters raised in the comments.

(d) *Additional response.* Additional filings in the nature of pleadings may be submitted only by leave of the administrative law judge.

### § 308.116 Eligibility of applicants.

(a) *General rule.* To be eligible for an award under this subpart, an applicant must have been named or admitted as a party to the proceeding. In addition, the applicant must show that it meets all other conditions of eligibility set out in paragraph (b) of this section.

(b) *Types of eligible applicant.* The types of eligible applicant are:

(1) An individual with a net worth of not more than $2 million at the time the adversary adjudication was initiated; or

(2) Any owner of an unincorporated business, or any partnership, corporation, associations, unit of local government or organization, the net worth of which did not exceed $7,000,000 and which did not have more than 500 employees at the time the adversary adjudication was initiated.

(c) *Factors to be considered.* In determining the types of eligible applicant:

(1) An applicant who owns an unincorporated business shall be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which he or she prevails are related to personal interests rather than to business interests.

(2) An applicant's net worth includes the value of any assets disposed of for the purpose of meeting an eligibility standard and excludes the value of any obligations incurred for this purpose. Transfers of assets or obligations incurred for less than reasonably equivalent value will be presumed to have been made for this purpose.

(3) The net worth of a bank shall be established by the net worth information reported in conformity with applicable instructions and guidelines on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the adversary adjudication.

(4) The employees of an applicant include all those persons who were regularly providing services for remuneration for the applicant, under its direction and control, on the date the adversary adjudication was initiated. Part-time employees are included as though they were full-time employees.

(5) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. The aggregated net worth shall be adjusted if necessary to avoid counting the net worth of any entity twice. As used in this subpart, "affiliates" are (i) individuals, corporations, and entities that directly or indirectly or acting through one or more entities control a majority of the voting shares of the applicant, and (ii) corporations and entities of which the applicant directly or indirectly owns or controls a majority of the voting shares.

The Board may, however, on the recommendation of the administrative law judge, or otherwise, determine that such aggregation with regard to one or more of the applicant's affiliates would be unjust and contrary to the purposes of this subpart in light of the actual relationship between the affiliated entities. In such a case the net worth and employees of the relevant affiliate or affiliates will not be aggregated with those of the applicant. In addition, the Board may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(6) An applicant that participates in a proceeding primarily on behalf of one or more other persons or entities that would be ineligible is not itself eligible for an award.

**§ 308.117 Prevailing party.**

(a) *General rule.* An eligible applicant who, following an adversary adjudication has gained victory on the merits in the proceeding, is a "prevailing party". An eligible applicant may be a "prevailing party" if a settlement of the proceeding was effected on terms favorable to it or if the proceeding against it has been dismissed. In appropriate situations an applicant may also have prevailed if the outcome of the proceeding has substantially vindicated the applicant's position on the significant substantive matters at issue, even though the applicant has not totally avoided adverse final action.

(b) *Segregation of costs.* When a proceeding has presented a number of discrete substantive issues, an applicant may have prevailed even though all the issues were not resolved in its favor. If such an applicant is deemed to have prevailed, any award shall be based on the fees and expenses incurred in connection with the discrete significant substantive issue or issues on which the applicant's position has been upheld. If such segregation of costs is not practicable, the award may be based on a fair proration of those fees and expenses incurred in the entire proceeding which would be recoverable under § 308.105 if proration were not performed. Whether separate or prorated treatment is appropriate, the appropriate proration percentage shall be determined on the facts of the particular case. Attention shall be given to the significance and nature of the respective issues and their separability and interrelationship.

**§ 308.118 Standards for awards.**

A prevailing applicant may receive an award for fees and expenses unless the position of the FDIC during the proceeding was substantially justified or special circumstances make the award unjust. An award will be reduced or denied if the applicant has unduly or unreasonably protracted the proceedings. Awards for fees and expenses incurred before the date on which the adversary adjudication was initiated are allowable if their incurrence was necessary to prepare for the proceeding.

**§ 308.119 Measure of awards.**

(a) *General rule.* Awards will be based on rates customarily charged by persons engaged in the business of acting as attorneys, agents, and expert witnesses, even if the services were made available without charge or at a reduced rate, provided that no award under this subpart for the fee of an attorney or agent may exceed $75 per hour. No award to compensate an expert witness may exceed the highest rate at which the FDIC pays expert witnesses. An award may include the reasonable expenses of the attorney, agent, or expert witness as a separate item, if the attorney, agent, or expert witness ordinarily charges clients separately for such expenses.

(b) *Determination of reasonableness of fees.* In determining the reasonableness of the fee sought for an attorney, agent, or expert witness, the administrative law judge shall consider the following:

(1) If the attorney, agent, or expert witness is in private practice, his or her customary fee for like services, or, if he or she is an employee of the applicant, the fully allocated cost of the services;

(2) The prevailing rate for similar services in the community in which the attorney, agent, or expert witness ordinarily performs services;

(3) The time actually spent in the representation of the applicant;

(4) The time reasonably spent in light of the difficulty or complexity of the issues in the proceeding; and

(5) Such other factors as may bear on the value of the services provided.

(c) *Awards for studies.* The reasonable cost of any study, analysis, test, project, or similar matter prepared on behalf of an applicant may be awarded to the extent that the charge for the service does not exceed the prevailing rate payable for similar services, and the study or other matter was necessary for preparation of the applicant's case and not otherwise required by law or sound business or financial practice.

**§ 308.120 Application for awards.**

(a) *Contents.* An application for an award of fees and expenses under this subpart shall contain:

(1) The name of the applicant and an identification of the proceeding;

(2) A showing that the applicant has prevailed, and an identification of each issue with regard to which the applicant believes that the position of the FDIC in the proceeding was not substantially justified;

(3) A statement of the amount of fees and expenses for which an award is sought;

(4) If the applicant is not an individual, a statement of the number of its employees on the date the proceeding was initiated;

(5) A description of any affiliated individuals or entities, as defined in § 308.103(c)(5), or a statement that none exist;

(6) A declaration that the applicant, together with any affiliates, had a net worth not more than the ceiling established for it by § 308.103(b) as of the date the proceeding was initiated; and

(7) Any other matters that the applicant wishes the FDIC to consider in determining whether and in what amount an award should be made.

(b) *Verification.* The application shall be signed by the applicant or an authorized officer or attorney of the applicant. It shall also contain or be accompanied by a written verification under oath or under penalty of perjury that the information provided in the application and supporting documents is true and correct.

**§ 308.121 Statement of net worth.**

(a) *General rule.* A statement of net worth must be filed with the application for an award of fees. The statement shall reflect the net worth of the applicant and all affiliates of the applicant.

(b) *Contents.* (1) The statement of net worth may be in any form convenient to the applicant which fully discloses all the assets and liabilities of the applicant and all the assets and liabilities of its affiliates, as of the time of the initiation of the adversary adjudication. Unaudited financial statements are acceptable unless the administrative law judge or the Board otherwise requires. Financial statements or reports to a Federal or State agency, prepared before the initiation of the adversary adjudication for other purposes, and accurate as of a date not more than three months prior to the initiation of the proceeding, are acceptable in establishing net worth as of the time of the initiation of the proceeding, unless the administrative law judge or the Board otherwise requires.

(2) In the case of applicants or affiliates that are not banks, net worth shall be considered for the purposes of this subpart to be the excess of total assets over total liabilities, as of the date the underlying proceeding was initiated, except as adjusted under § 308.103(c)(2). Assets and liabilities of individuals shall include those beneficially owned within the meaning of the FDIC's rules and regulations.

(3) If the applicant or any of its affiliates is a bank, the portion of the statement of net worth which relates to the bank shall consist of a copy of the bank's last Consolidated Report of Condition and Income filed before the initiation of the adversary adjudication. In all cases the administrative law judge or the Board may call for additional information needed to establish the applicant's net worth as of the initiation

of the proceeding. Except as adjusted by additional information that was called for under the preceding sentence, net worth shall be considered for the purposes of this subpart to be the total equity capital (or, in the case of mutual savings banks, the total surplus accounts) as reported, in conformity with applicable instructions and guidelines, on the bank's Consolidated Report of Condition and Income filed for the last reporting date before the initiation of the proceeding.

(c) *Statement confidential.* Unless otherwise ordered by the Board or required by law, the statement of net worth shall be for the confidential use of counsel for the FDIC, the Board, and the administrative law judge.

**§ 308.122 Statement of fees and expenses.**

The application shall be accompanied by a statement fully documenting the fees and expenses for which an award is sought. A separate itemized statement shall be submitted for each professional firm or individual whose services are covered by the application, showing the hours spent in work in connection with the proceeding by each individual, a description of the specific services performed, the rate at which each fee has been computed, any expenses for which reimbursement is sought, the total amount claimed, and the total amount paid or payable by the applicant or by any other person or entity for the services performed. The administrative law judge or the Board may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

**§ 308.123 Settlement negotiations.**

If counsel for the FDIC and the applicant believe that the issues in a fee application can be settled, they may jointly file with the Executive Secretary a statement of their intent to negotiate a settlement. The filing of this statement shall extend the time for filing an answer under § 308.102 for an additional twenty days, and further extensions may be granted by the administrative law judge upon the joint request of counsel for the FDIC and the applicant.

**§ 308.124 Further proceedings.**

(a) *General rule.* Ordinarily, the determination of a recommended award will be made by the administrative law judge on the basis of the written record. However, on request of either the applicant or the FDIC, or on his or her own initiative, the administrative law judge may order further proceedings such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further proceedings will be held only when necessary for full and fair resolution of the issues arising from the application and will be conducted promptly and expeditiously.

(b) *Request for further proceedings.* A request for further proceedings under this section shall specifically identify the information sought or the issues in dispute and shall explain why additional proceedings are necessary.

(c) *Hearing.* Ordinarily, the administrative law judge shall hold an oral evidentiary hearing only on disputed issues of material fact which cannot be adequately resolved through written submissions.

**§ 308.125 Recommended decision.**

The administrative law judge shall file with the Executive Secretary a recommended decision on the fee application not later than ninety days after the filing of the application or thirty days after the conclusion of the hearing, whichever is later. The recommended decision shall include written proposed findings and conclusions on the applicant's eligibility and its status as a prevailing party and an explanation of the reasons for any difference between the amount requested and the amount of the recommended award. The recommended decision shall also include, if at issue, proposed findings on whether the FDIC's position was substantially justified, whether the applicant unduly protracted the proceedings, or whether special circumstances make an award unjust. The administrative law judge shall file the record of the proceeding on the fee application and, at the same time, serve upon each party a copy of the recommended decision, findings, conclusions, and proposed order.

**§ 308.126 Board action.**

(a) *Exceptions to recommended decision.* Within twenty days after service of the recommended decision, findings, conclusions, and proposed order, the applicant or counsel for the FDIC may file with the Executive Secretary written exceptions thereto. A supporting brief may also be filed.

(b) *Decision of Board.* The Board shall render its decision within sixty days after the matter is submitted to it by the Executive Secretary. The Executive Secretary shall furnish copies of the decision and order of the Board to the parties. Judicial review of the decision and order may be obtained as provided in 5 U.S.C. 504(c)(2).

**§ 308.127 Payment of awards.**

An applicant seeking payment of an award made by the Board shall submit to the Executive Secretary a statement that the applicant will not seek judicial review of the decision and order or that the time for seeking further review has passed and no further review has been sought. The FDIC will pay the amount awarded within thirty days after receiving the applicant's statement, unless judicial review of the award or of the underlying decision of the adversary adjudication has been sought by the applicant or any other party to the proceeding.

By order of the Board of Directors.

Dated at Washington, DC, this 16th day of November 1988.

Federal Deposit Insurance Corporation.

**Hoyle L. Robinson,**

*Executive Secretary.*

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December 22, 1988

Part V

# Environmental Protection Agency

40 CFR Part 704

Comprehensive Assessment Information Rule; Final Rule

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 704**

**[OPTS-82013C; FRL-3368-1]**

## Comprehensive Assessment Information Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating a standard approach to gathering information on the manufacture, importation, and processing of chemical substances and mixtures under section 8(a) of the Toxic Substances Control Act (TSCA). This standard approach, or model rule, titled the Comprehensive Assessment Information Rule (CAIR), establishes uniform reporting and recordkeeping requirements and a list of questions from which specific information requirements will be assembled on a substance-by-substance basis. This rule will be used to obtain information needed by EPA and other Federal agencies to support the assessment and regulation of chemical substances and mixtures. EPA is also establishing specific reporting requirements for 19 substances at this time. Future additions of substances will be made through amendments to this rule announced in the **Federal Register**.

**DATES:** In accordance with 40 CFR 23.5 (50 FR 7271), this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern time on January 5, 1989. This rule shall become effective on February 6, 1989.

**FOR FURTHER INFORMATION CONTACT:** Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460. Telephone: (202) 554-1404. Hearing Impaired: TDD (202) 554-0551.

**SUPPLEMENTARY INFORMATION:** In this rulemaking, EPA is establishing a standard approach to gathering information on the manufacture, importation, and processing of substances. This standard approach, or model rule, is called the Comprehensive Assessment Information Rule (CAIR). It establishes uniform reporting and recordkeeping requirements that can be adapted to specific substances and a standardized reporting form. This rule will reduce duplicative reporting by industry and conserve EPA resources.

Public reporting burden for this collection of information is presented in chart form in Unit XII.C. of this preamble. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. To locate a respondent's burden estimate on the chart, identify the substance's Chemical Abstract Service (CAS) Registry Number and the respondent category for which the report is being submitted, and locate the corresponding range. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

### I. Authority

Section 8(a) of the Toxic Substances Control Act (TSCA) authorizes the Administrator of EPA to promulgate rules that require manufacturers, importers, and processors of chemical substances and mixtures (referred to hereafter as substances or chemical substances) to maintain records and submit information on such substances as the Administrator may reasonably require. Failure to comply fully with any provision of a section 8(a) rule is a violation of section 15 of TSCA and subjects the violator to penalties under TSCA sections 16 and 17.

### II. Background

#### *A. Proposed Rule*

The proposed rule was published in the **Federal Register** of October 7, 1986 (51 FR 35762). Recognizing the wide scope of this rule and the comment period overlap with another major reporting rule, the Agency extended the comment period for an additional 60 days (for a total of 150 days) to allow sufficient time for thoughtful comment.

Extensive comments were received from the public during this time period. A brief discussion of these comments and the changes made to the rule in response to these comments is found in each section of the preamble that addresses that particular aspect of the rule.

The Agency has also prepared a more detailed discussion of the comments and EPA responses in a document titled "Response to Comments" that is in the public record for this rule. Also included in this record are the results of a pre-test of the reporting form conducted by the Agency during the comment period.

#### *B. Description of Rule*

The CAIR has generic reporting and recordkeeping requirements and a standard list of questions. The main objective of the CAIR is to obtain necessary information in a timely fashion while conserving industry and EPA resources. The CAIR will accomplish this objective by: (1) reducing duplicative reporting by industry, (2) reducing familiarization time for industry responding to reporting requirements, and (3) reducing Agency resources needed to develop information-gathering rules and process the data reported.

It is EPA's intention to amend the CAIR from time-to-time through regular notice and comment rulemaking for purposes of adding substances to the rule. Unless absolutely necessary, no other changes will be made to the regulatory text or the CAIR form. Amendments will identify the substances for which there is an information need, the information requested, the retrospective period covered by the rule, and the categories of persons who must provide the information. Only those questions and reporting requirements listed in the amendments must be complied with. For example, EPA may require manufacturers and processors of substance "X" to respond to all of the questions in Section 1 plus questions 2.03, 3.05, and 4.05 in the reporting form, while manufacturers and processors of substance "Y" might be required to answer all of the questions in Section 1 plus questions 2.03, 5.06, 7.03, and 7.05. Hereafter, when discussing amendments to the CAIR, the Agency is referring to amendments that will add chemical substances to the rule but not alter any other parts of the regulatory text, unless otherwise stated.

#### *C. Intent of Rule*

EPA is promulgating the CAIR as an improved method for gathering and maintaining information on substances relevant to chemical risk identification, all stages of risk assessment, and control action functions. By using a uniform format and set of questions, both EPA and industry can reduce time and resources usually associated with the varying formats of traditional chemical-specific rules. In the same way, errors in reporting and interpretations of the type of data being requested can be reduced through experience with a model rule. The standardized format proposed in the CAIR will allow EPA to have a single data base for easy storage and retrieval.

and will allow industry the same benefit.

Generally, regulatory agencies gather information to support the assessment and management of chemical risks through a lengthy and costly process. First, an agency determines that a particular substance under certain circumstances may present a risk to health or the environment. The agency then gathers readily available information about that substance to determine possible courses of action. This information may support a determination that regulatory action is appropriate, but precise information is usually needed to determine whether and to what degree regulation is required. Since this information is held by chemical substance manufacturers, importers, and processors and is not publicly available, the agency must use its statutory authority to gather the information.

This requires that the agency draft and issue a proposed rule, review public comments, draft and issue a final rule, and establish and maintain a data base on the reported information. During this time the agency must either delay taking risk management action or take action without complete information. Because each information-gathering rule usually has unique reporting requirements, the agency also has to respond to numerous questions following each new rule's promulgation.

Information-gathering rules may also be costly to the companies submitting the information. For each proposed rule, potential respondents review the requirements and, if necessary, submit comments. Following promulgation, the companies familiarize themselves with the final reporting requirements, locate the information in company files, complete the reporting forms, and submit them to the agency.

EPA's experience with model rules has shown that model rules offer several advantages for both EPA and respondents. For EPA, the advantages are: (1) the time to promulgate an amendment that adds chemical substances to a model rule is one-quarter to one-third the time needed to publish a chemical-specific rule; (2) Agency review can concentrate on the need for information and the information request since reporting and recordkeeping requirements are standardized; (3) more efficient handling and review of completed forms due to standardization; and (4) a single, universally accessible data base is possible for storage and retrieval of information.

For respondents, model rules offer the advantage of certainty. No matter the substance, many of a respondent's reporting and recordkeeping obligations are standardized, including the use of the same reporting form. This reduces familiarization time and reporting costs. Also, EPA's experience with a model rule has shown that as respondents repeatedly use a form, correct errors, and resubmit the form, significantly fewer errors occur. Thus, with model rules, the cost to respondents of resubmitting reporting forms is reduced. It also ensures that the Agency can access a complete and accurate data base more quickly, rather than waiting for corrections to be made.

*D. The CAIR and Other Section 8(a) Model Rules*

EPA designed this rule by building on its experience with two existing section 8(a) regulations: the TSCA Inventory Update Rule (IUR) (40 CFR Part 710, Subpart B; 51 FR 21438; June 12, 1986) and the Preliminary Assessment Information Rule (PAIR) (40 CFR Part 712; 47 FR 26992; June 22, 1982). The TSCA IUR requires manufacturers and importers of certain chemical substances to provide EPA with basic identification, production, and site-limited status information every 4 years. Questions requesting the same information have been added to Section 1 of the CAIR reporting form and would be answered by persons subject to the CAIR. EPA has included an exemption in the IUR to ensure that a company reporting for the CAIR would not have to report for the IUR (40 CFR 710.35). Under this exemption, persons who must report for the CAIR are not required to submit subsequent IUR reports so long as the CAIR reporting occurred no more than 1 year prior to the period for which IUR reporting is required.

The Agency also designed the CAIR reporting form to include questions similar to those in the PAIR. Three basic differences exist between the PAIR and the CAIR: (1) only manufacturers and importers are subject to the PAIR, whereas processors are also potentially subject to the CAIR; (2) under the PAIR, respondents are required to answer every question in the PAIR (EPA Form 7710–35), whereas the CAIR lists only the specific questions (from the entire form) that must be answered; and (3) whereas the PAIR form contains only basic questions on production, use, and exposure that can support preliminary assessments of chemical substances, the CAIR includes more detailed information designed to support all stages of assessments.

Substances are added to the PAIR by (1) notice and comment rulemaking or (2) adding a substance to the rule automatically without notice and comment and requiring reporting within 90 days. Only substances identified by the Interagency Testing Committee (ITC) under TSCA section 4(e) are added automatically.

Under the CAIR, any EPA program office requesting basic PAIR-type information on a substance can use the CAIR to gather this information. Such additions of substances will be made through regular notice and comment rulemaking. The Agency is planning to amend the CAIR, at some future date, to add the ITC automatic reporting provisions. EPA will at that time withdraw the PAIR. However, until that time, ITC identified substances will continue to be added to the PAIR.

Although not issued under the authority of TSCA section 8(a), the Superfund Amendments and Reauthorization Act (SARA) Title III, section 313 rule which was published in the **Federal Register** of February 16, 1988 (53 FR 4500), has some similarities to the CAIR. Like the CAIR, the SARA section 313 rule requires manufacturers, importers, and processors to report exposure-related information on listed substances. Unlike the CAIR, SARA section 313 requires annual reporting on every substance listed in the rule unless a substance is removed from the rule. To minimize the burden on companies that may have to report for both rules, EPA has purposely staggered the reporting periods for the first round of reporting and will seek ways to minimize reporting overlap in the future. Further, any substance listed on the SARA section 313 rule and also on the CAIR, will not be subject to duplicative reporting. That is, those questions on the CAIR that directly overlap questions on the SARA section 313 rule will not be asked under the CAIR for any substances that are on both rules. Data received on those substances which are on both rules will be shared between EPA's Office of Toxic Substances (OTS) and EPA's Office of Solid Waste and Emergency Response (OSWER), as well as EPA's Office of Air and Radiation and Office of Water.

Also, if EPA has collected accidental release information under the Agency's Accidental Release Information Program on a substance being considered for the CAIR, questions which are duplicative of or similar to that information will not be asked under the CAIR. In addition, EPA will consider whether the information requested, if not already available, could be gathered more efficiently or accurately under the

Accidental Release Information Program than under the CAIR.

## III. The Final Rule

### *A. An Overview*

To be consistent between other TSCA section 8(a) rules and the CAIR, EPA consolidated and incorporated many requirements found in other parts of the CFR into Part 704. Part 704 provides the framework for all section 8(a) rules and is amended as follows: The current general provisions for all TSCA section 8(a) rules apply to all section 8(a) chemical-specific rules and, unless otherwise stated, to the CAIR. Subpart A of Part 704 contains the general reporting and recordkeeping provisions. Subpart B lists chemical-specific section 8(a) rules. The regulatory text that specifies the general provisions of the CAIR is located in Subpart C, and Subpart D contains the reporting period deadlines and a matrix that lists the substances for which there is an information need, the information requested for each substance, the period covered by the rule, the persons who must provide the information, exemptions added or removed, and the effective date of the final rule.

The sub-units under Unit B below correspond to the requirements in the CAIR matrix (Subpart D of the rule). Each sub-unit describes a requirement in the rule, and the last subunit explains how these requirements are listed in the matrix. Directions for obtaining the CAIR reporting form and instructions are given in Unit F.

### *B. Reporting Requirements*

#### 1. Who Must Report

For the 19 substances listed in this final rule, and whenever EPA adds a substance to the rule, the Agency states who is required to report on each substance (manufacturers, importers, and/or processors) and which previous years are covered by the rule. Manufacturing activities are all those activities at one site which are necessary to produce a listed substance and make it ready for sale or use as the listed substance, including purifying and importing a substance. Processing activities, on the other hand, include (1) use of a listed substance after its manufacture to make another substance for sale or use, (2) repackaging of the listed substance, or (3) purchasing and preparing the listed substance for use or distribution in commerce. Therefore, under the CAIR, all of the steps involved in making a CAIR listed substance, including adding stabilizers and additives, which are necessary to get the substance "out the door" or ready for use, are considered part of manufacturing.

Persons who are required to report must answer the CAIR reporting form questions only for the activity that is designated in the rule. For instance, if EPA were to require manufacturers of a substance to report, then a person who both manufactures and processes the substance would not have to answer the CAIR questions for both activities, only for the manufacturing activity; however, if both were required, the company would report on both activities using the same form.

For some of these listed substances, EPA is requiring processors other than the original manufacturer or importer to report. However, since many manufacturers, importers, and processors market the listed substances to these "customers" under names other than a systematic or easily recognizable chemical name (i.e., the substances are sold under trade names), persons who buy *and* process the substance under a trade name may not realize that the substance is listed on the CAIR and that they are required to report. Under the CAIR, EPA considered two approaches for gathering information from customers who process a listed substance. The first approach was to list the substances in the **Federal Register** by chemical name and require all processors of certain substances to report. Under this option, however, the Agency would expect to receive reports from only those persons who know or can reasonably ascertain that they are processing the listed substance. EPA has therefore chosen to adopt the second approach.

This reporting/notification mechanism, listed in § 704.208 of the CAIR, requires those persons who manufacture, import, or process a listed substance and distribute that substance under a trade name, to do one of three things: report for their customers who process the listed substance; notify their customers that the trade name substance is listed by EPA and that the customers must meet EPA reporting requirements; or provide EPA with the trade name.

Persons may report for their customers who process a listed substance only if they can supply the requested information. Such reporting is due no later than the reporting period deadline for that substance listed in § 704.223(a). All reporting requirements that apply to a customer who processes the listed substance would then apply to the person submitting the report on behalf of the customer. Such persons are liable for information they report incorrectly on their customers' activities just as the customers would be for reporting incorrectly on their own activities. Persons who sell a listed substance under a trade name and who are either unable to report for their customers or who choose not to do so are required to comply with one of the other options.

Manufacturers, importers, or processors may choose to notify, in writing, their customers who are subject to reporting and inform them of the specific section in Subpart D that identifies the substance and the processor reporting requirements. The customers who process the substance prior to the effective date of the listing of the substance must be notified by certified mail no later than 30 days after the effective date of the listing of the substance. The customers must then report to EPA within the time period specified in § 704.223(b) of the receipt of the notification. Persons who notify their customers of their reporting obligation must also inform them of the date such reporting is due, and the citation of the **Federal Register** that promulgated the reporting requirements on the listed substance.

Manufacturers, importers, or processors who do not wish to report for their customers or notify them of their reporting obligations must, by 1 day after the effective date of the rule listing the substances, submit their trade names to EPA (to the same address as the reporting forms). These submissions must contain, at a minimum, the company's name and address, the address and telephone number of the company's technical contact, the chemical name and CAS number of the substance as listed in the rule, and the trade names under which the substance is marketed. The submitter must indicate that the submission is in response to a CAIR **Federal Register** notice.

Once the trade names are received, EPA will issue a technical amendment adding the trade names to the final rule. This amendment will be published in the **Federal Register** within 4 weeks after the rule has become effective, and the processors of these trade name substances would then have to submit their reports by the deadline specified in the reporting period for that amendment.

The following diagram graphically depicts the reporting schedule for each of the three customer reporting/notification options. Since the reporting period for the substances listed in this final rule is 90 days from the effective date of the final rule, the 90-day period is used in the example. Future amendments may have different reporting periods.

BILLING CODE 6560-50-M

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SCHEDULES FOR CUSTOMER REPORTING/NOTIFICATION OPTIONS

(1) Persons Who Choose To Report For Their Customers:

| Publication Date | Effective Date | Reports Due |
|---|---|---|
| | 90 Days | |

(2) Persons Who Choose to Notify Their Customers:

| Publication Date | Effective Date | Notify Customers | Customers Report |
|---|---|---|---|
| | 30 Days | 90 Days | |

(3) Persons Who Choose To Submit Trade Names To EPA:

| Publication Date | Submit Trade Names | EPA Publishes Trade Names | Customers Report |
|---|---|---|---|
| Effective Date + 1 day | 4 Weeks | 90 Days | |

BILLING CODE 6560-50-C

In the proposed CAIR, EPA requested comments on this customer reporting/notification mechanism and suggestions for alternate information gathering approaches. No substantive suggestions for an alternative mechanism were received. Therefore, the Agency will use the scheme as proposed. To minimize the burden of this requirement, the Agency has extended the time period for notifying customers for those persons who choose this option. The proposed rule had set a 10-day time limit; this final rule extends the period to 30 days. EPA will reevaluate this provision and may reduce or further extend the 30-day period for subsequent CAIR iterations.

Persons who choose the customer notification option, but who cannot meet the deadline, may request an extension of time. Extension requests must be in writing, justify the need for the extension, and be postmarked no less than 5 days prior to the notification deadline.

Some commenters to the proposed rule suggested that the definition of "customer" was too broad in that it includes disposal facilities and persons who purchase articles. These commenters felt that such persons should not be included under the CAIR and that manufacturers and processors should not be responsible for notifying them or reporting for them. The Agency has decided to leave the definition as proposed. Since persons who import or process a listed substance as part of an article are exempt from this rule, the persons who sell these articles are not responsible for notifying their customers who process the articles.

The Agency does not agree that persons who operate disposal facilities should be excluded from CAIR reporting; processing of the listed substances at a disposal facility can present a significant potential for exposure about which EPA or other agencies may require information.

2. Exemptions From Reporting

Persons who manufacture, import, or process a listed substance are subject to this rule unless they meet one or more of the standard exemptions set forth in §§ 704.5 or 704.210. The following persons are exempt, unless the exemption is made inapplicable on a substance-by-substance basis: (1) small manufacturers (total annual parent sales are less than 40 million dollars and the company manufactures less than 100,000 pounds at a plant site, or total annual parent company sales less than 4 million dollars); (2) processors and importers of articles; (3) manufacturers, importers, and processors of substances that are manufactured, imported, or processed solely as impurities or byproducts; (4) manufacturers, importers, and processors of research and development substances; and (5) manufacturers of nonisolated intermediates. Whenever EPA intends to change any or all of these exemptions for reporting on a particular substance, the Agency will use notice and comment rulemaking and the change in the exemption will be noted in the matrix in Subpart D of the CAIR. Two new exemptions, which are discussed below, have been added to § 704.210 in Subpart C.

EPA, under the CAIR, is requiring processors to report; however, processors who are either small or are solely repackagers would be exempt from reporting. A processor is exempt if (a) total annual parent company sales are less than 40 million dollars and the company processes less than 100,000 pounds of a listed substance at a plant site; or (b) if a processor has total annual parent company sales of less than 4 million dollars. These sales and volume limits are the same limits EPA uses to define small manufacturers. Like the small manufacturer exemption, EPA intends to revise the sales figures periodically based on the Producer Price Index for Chemicals and Allied Products.

The small processor exemption uses the same size limitations as the small manufacturer exemption because: (1) in the aggregate, for the chemical industry in general, the sales and quantities produced or processed are approximately the same for manufacturers and processors, and (2) many manufacturers are also processors and therefore are potentially subject to CAIR reporting for either or both activities. Consistent standards for both will result in an insignificant information loss and will minimize confusion for respondents.

EPA is also exempting processors who are solely repackagers. A repackager is defined as a person who buys a listed substance or mixture, removes the substance or mixture from the container in which it was bought, and transfers this substance, as is, to another container for sale. The Agency has determined that requiring such reporting would greatly expand the scope of CAIR (i.e., the number of persons who must report) without significantly adding to the quality of the data reported. Persons who engage in processing activities other than repackaging must report. Moreover, since repackagers, by definition, are preparing a substance for further use, those persons who buy the repackaged substance and process it further will still be required to report, unless they are users of the substance. Thus, EPA, in most cases, will be able to track a substance through commerce, even if repackagers do not report. The Agency will re-evaluate this exemption in the future to determine whether it excessively limits the reporting of significant data.

If any of the exemptions stated above are changed in the rule for a particular listed substance, the Agency will indicate this by listing the exemption citation in the matrix and preceding it with a minus sign (e.g., "−§ 704.210"). Exemptions that are added for the first time to the CAIR will be listed in the matrix next to the substances to which they apply and will be indicated by the citation preceded with a plus sign.

3. Coverage Period

As with the other requirements described in Unit III.B. of the preamble, the dates when a company was engaged in manufacturing, importing, or processing a CAIR listed substance will help determine whether the company has to report or not. The dates must be during a complete corporate year that occurred during the "coverage period" identified with each substance in Subpart D. The coverage period is a time span that is 1 day less than 2 years; thus, no company can have more than one complete corporate year in any one coverage period.

An example of how the coverage period works is as follows. EPA issues a CAIR amendment with an effective date of November 7, 1989; the rule requires manufacturers of chemical A to report. The coverge period is from November 8, 1987 to November 6, 1989. If a company has a corporate year from January 1 to December 31 and begins manufacturing chemical A on May 27, 1989, the company does not have to report. Even though the company was making the CAIR substance during the coverage period, no manufacturing activity occurred during the complete corporate fiscal year which falls within the coverage period (January 1, 1988 to December 31, 1988).

With each substance added to the CAIR, EPA will identify one or more coverage periods. When more than one coverage period is identified with a substance, the most recent coverage period will be listed first, the next most recent second, etc. The most recent coverage period loosely corresponds to what EPA called "current reporting" in the proposal; the other periods were called "past reporting." Many commenters to the proposed rule stated

that requiring reporting on activities that occurred in past years (i.e., past reporting) would be difficult for some companies since (1) they may have gone out of business, and (2) personnel who were engaged in these activities and files on these activities may no longer be available.

EPA has decided to continue its requirement as proposed, although in a different format for coverage periods. Although EPA will continue to require reporting on some substances with past coverage periods, persons subject to these past requirements would only be responsible for completing Section 1 of the CAIR reporting form; however, any question on the CAIR form may be asked for *current* coverage periods. Further, companies that were engaged in reportable activities for more than one coverage period, would only be required to report for the most recent coverage period. In addition, EPA will include no more than two past coverage periods, plus the current coverage period, for any one substance, thereby minimizing the burden on companies subject to past or multiple coverage periods.

The Agency decided to keep some past reporting in the CAIR since if all such reporting were eliminated, batch manufacturers that did not produce a listed substance during the current coverage period would not be required to report, and the degree of past exposure would be underestimated.

For the purposes of the CAIR, EPA requires reporting only if persons currently manufacture or process chemical substances for commercial purposes. Thus, companies that manufactured or processed a listed substance in the past, but who are not manufacturing or processing *any* chemical substances as of the effective date of the rule or rule amendment listing a substance, are not subject to reporting. Companies that are subject to the rule who engaged in reportable activities only during a past coverage period are to report only that information known to them or reasonably ascertainable by them. Thus, some companies that cannot reconstruct data for past reporting can state that the data are unknown.

In the proposed rule EPA included requirements not only for activities that occurred in the past but also for activities that may occur in the future. Many commenters questioned the Agency's ability to determine now what its information needs will be in the future. Further, they argued that EPA should first review the data submitted during the initial reporting period before requiring subsequent reporting. The Agency agrees. EPA will wait to propose subsequent reporting until after initial reporting requirements are received and reviewed. If subsequent reporting is deemed necessary, EPA will propose and promulgate these requirements.

The Agency believes that waiting to issue additional reporting requirements until initial data have been submitted will be beneficial to all parties. Under the proposed approach, many years may have elapsed between the proposal of additional reporting requirements and the date when actual reporting is required. For example, some substances in the October 7, 1986, proposal had +5 designations. This means that if the effective date for initial reporting was October 1, 1988, future reporting would not be due until 90 days after October 1, 1993. During the period between the proposed and final rule, new information may become available to the Agency or the public that might lessen or eliminate the need for the CAIR data.

4. Question Selection

The question selection section of the rule specifies which questions from the CAIR reporting from must be answered for specific substances. Each person subject to the rule need only answer those questions designated for his or her substance.

The question selection requirement will always include Section 1 of the reporting form. Other questions and sections of the form will be requested on an as-needed basis. These requirements will be listed in the CAIR matrix by the section or question number from the CAIR reporting form. Whenever the question selection lists a section in the CAIR form, each person subject to that requirement must answer all parts of that section. A question selection listing might be as follows: 1, 2 all, 3 all, 4.01, 4.05, 5 all. The 1, 2 all, 3 all, and 5 all, refer to entire sections of the CAIR form; the 4.01 and 4.05 refer to specific questions in Section 4 of the form.

5. Reporting Period

All persons subject to the rule must report no later than the dates specified in § 704.223(a) of Subpart D of this rule. Processors who are notified of their reporting obligation by their chemical suppliers must report within the time period identified in § 704.223(b).

Persons who cannot meet a reporting deadline can request a reasonable extension. These requests must be in writing with a justification for the extension request, and they must be received by EPA within: 30 days after the effective date listing the substance or 30 days after receiving notice from a chemical supplier of the processor reporting obligations.

Some commenters suggested that EPA provide longer reporting periods because the CAIR reporting period could overlap with that of section 313 of SARA. Since the CAIR becomes effective after the close of the first section 313 reporting, no overlap exists.

Other commenters requested more time to report than the 60 days proposed for this rule because of the resource intensive nature of CAIR reporting. The Agency has considered the comments received on the length of the reporting period and has decided to set a 90-day response period for the substances listed in today's rule. Since the 90-day response period starts when the rule becomes effective, and the rule is not effective until 44 days after today's **Federal Register** publication date, respondents will have several months to prepare their CAIR reports. However, if necessary, the Agency may require a shorter response period (e.g., 60 days) in some cases in the future. The reporting period for each CAIR amendment will be specified in the paragraph preceding the CAIR matrix (§ 704.223).

6. Use of the CAIR Matrix

The CAIR matrix in Subpart D of this rule lists all of the reporting requirements and any changes to the standard CAIR exemptions that may apply to each listed substance. The matrix lists substances, persons who must report, exemption modifications, coverage period, questions selected for reporting, and the effective date. The following sample matrix was developed to illustrate how the matrix in Subpart D works.

SAMPLE MATRIX

| CAS No. and chemical name | Who must report | Exemptions added (+), removed (−) | Coverage period | Questions selected | Effective date |
|---|---|---|---|---|---|
| 56-78-9 Chemical A | M, X/P, I, P | | 5/4/86 to 5/2/88 | 1, 2.01, 2.11, 2.12, 3.04, 4 all, 6.03, 7.01, 8.01. | 5/3/88 |
| | M | | 5/4/85 to 5/2/87 | 1 | 5/3/88 |
| 62-23-5 Chemical B | M, I | | 5/4/86 to 5/2/88 | 1, 2.01, 2.04 thru 2.06, 9.04 thru 9.07, 10.05. | 5/3/88 |

M = Each Person Who Manufactured the Substance for Commercial Purposes.
I = Each Person Who Imported the Substance for Commercial Purposes.
P = Each Person Who Processed the Substance for Commercial Purposes.
X/P = Each Person Who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name

As one can see from this matrix, each of the four reporting requirements is a column heading. The other column headings are the identification for the listed substance (CAS Number and Chemical Name), and the effective date of the final rule listing the substance. The first step potential respondents should take is to look at the chemical list. If they have not manufactured, imported, or processed any of the listed substances during the previous 3 complete corporate fiscal years, they do not have to report for the CAIR. If, on the other hand, they have engaged in one of those activities, they must read further.

The first variable that excludes a company from CAIR reporting means that company is not subject to reporting on that substance. For example, if a company processes a listed substance, but upon reading column 2 learns that only manufacturers and importers are required to report, that company is not subject to reporting on that substance.

The coverage period is the last variable that determines whether a company must report or not. The company would determine the complete corporate fiscal year which falls within each coverage period identified in the matrix and whether it engaged in a subject activity during each coverage period. The company would then report for the most recent complete corporate fiscal year during which it engaged in a subject activity. If the company did not engage in a subject activity during any coverage period, it need not report under the CAIR. For example, using the sample matrix, suppose a company has its corporate fiscal year from January 1 through December 31, and manufactured Chemical A from August 13, 1986 to May 27, 1987. The company's complete corporate fiscal year which falls within the coverage period (May 2, 1986–April 30, 1988) was January 1, 1987 to December 31, 1987. The company must therefore report as a manufacturer of Chemical A from January 1, 1987 to May 27, 1987. For this activity the company is responsible for the reporting requirements in the next column (1, 2.01, 2.11, 2.12, etc.). Even though the company also manufactured Chemical A in a past coverage period (May 2, 1985 to April 30, 1987), the company does not need to report its activity during that period. A company need only report for the most recent reporting year applicable to them.

*C. Levels of Effort*

In response to the many questions and comments received on the four "levels of effort" set forth in the proposed rule, and a concern for lessening the burden placed on the reporting public, EPA is eliminating the "levels of effort" requirement and will require persons to report information that is "known to or reasonably ascertainable by" them as defined in § 704.3. The "levels of effort" concept was conceived by the Agency to spell out more specifically what level of effort companies would need to meet their reporting obligation. However, some commenters stated that this scheme was less clear than the "known to or reasonably ascertainable by" standard used in previous rules. Thus, the latter standard has been adopted for this rule.

*D. Recordkeeping*

Under § 704.11, persons subject to the requirements of the rule must retain: a copy of each report submitted, supporting materials sufficient to verify or reconstruct the report, and a copy of all notices sent to customers who are required to report, with return receipt cards. The report submitted to EPA and its supporting material must be retained for a period of 3 years from the date of the submission of the report. Notices submitted to customers, including return receipt cards, must be retained 3 years from the date they were sent to the customers.

Some commenters stated that requiring records to be kept more than 2 years would place a severe burden on many companies. Further, the records that must be kept, (as set forth in the proposed rule in § 704.11(b)—"all supporting material and documentation used by the person to complete each report") were viewed by the commenters as too inclusive and resource intensive to maintain.

EPA has reviewed the typical schedules for compliance inspections to determine the appropriate length of time CAIR records must be retained so that they will be available during an inspection. Based on this analysis, the Agency has determined that a period of 3 years is necessary. However, the Agency has revised § 704.11 to specify the retention only of those records mentioned in the first paragraph of this Unit.

*E. Confidentiality*

Section 14(a) of TSCA allows a person who submits information to EPA to assert a claim of confidentiality, if release of the information would reveal trade secrets or confidential commercial or financial information. Under the CAIR, claims of confidentiality can be asserted only at the time information is submitted and only in the manner specified in § 704.219. Detailed instructions and a substantiation form for asserting and substantiating confidentiality claims under this rule are contained in Appendix II of the CAIR Form. EPA's procedures for processing and reviewing confidentiality claims are set forth at 40 CFR part 2, Subpart B.

Any submitter who claims information on a submission as confidential is required to provide two copies of the submission: a complete copy of the form, including all information claimed as confidential, and a "sanitized" copy from which all confidential information has been

deleted. EPA will place the submitter's sanitized copy in the public file.

The rule requires submitters to substantiate all confidentiality claims by answering questions contained in Appendix II of the CAIR form. Rather than providing a separate substantiation for each reporting item claimed as confidential, submitters may organize the claimed information into categories, (e.g., production volume or submitter identity) and submit a single substantiation for each category. In addition to answering questions pertaining to the individual categories, submitters are required to answer questions pertaining to all confidentiality claims asserted.

As is detailed in the instructions in Appendix II of the CAIR Form, each question is claimed as confidential by identifying the appropriate category of confidentiality. Only those categories identified as confidential by submitters have to be substantiated. The substantiation questions outline the analytic process the submitters should go through before asserting a claim of confidentiality, helping the submitter to focus on relevant issues.

Commenters have stated that this requirement is burdensome, and that the effort required to complete reporting forms and the accompanying substantiation would be laborious. EPA recognizes the effort necessary for reporting but does not find the burden onerous and therefore has not altered the requirement. EPA requires up-front substantiation of only the six categories of confidentiality claims rather than separate substantiation for each and every reporting item. This will minimize the reporting requirement while providing adequate substantiation.

Commenters questioned the validity of requiring up-front substantiation of confidentiality claims. Commenters stated that TSCA section 14(c)(1) contains no authority for requiring up-front substantiation of confidentiality claims. Section 14(c)(1) allows submitters to designate data as confidential and provides for separate submission of such data. While section 14(c)(1) does not specify substantiation, it does provide for designation of claims in writing and "in such manner as the Administrator may prescribe," contemplating requirements involving more than just an assertion of a claim. EPA is committed to the public disclosure of as much nonconfidential information collected under the rule as possible. Requiring up-front substantiation of confidentiality claims and continued close scrutiny of such claims through the established claim review process will ensure that as much information as possible is releasable. Public interest in the information generated by this rule justifies this approach. Up-front substantiation obviates the need for follow-up substantiation by submitters resulting from EPA review or Freedom of Information Act requests.

If a company fails to submit a sanitized copy of its submission, EPA will notify the company by registered mail. The respondent will have 30 days from the date of receipt of the notice letter to submit the required second copy. If the Agency does not receive the requested sanitized version, EPA will place the confidential copy of the submission in the public file on the 31st day after the submitter's receipt of EPA's letter. If no claim of confidentiality accompanies a document or the claim is unaccompanied by the required substantiation at the time it is submitted to EPA, the company will be notified that the unsanitized copy will be placed in the public file.

EPA will attempt to provide the public with sufficient and informative access to information collected under this rule while protecting submitters' valid proprietary interests. This will be accomplished by: (1) disclosing to the public all reported information not claimed as confidential; and (2) releasing nonconfidential aggregates of confidential information when possible.

The proposed rule specified that the sanitized copy of a confidential submission provide "generic" information for each item claimed confidential. Commenters on the proposed rule expressed concern over the practicality of a generic information requirement, pointing out the difficulty of devising generic descriptions of confidential data that would be meaningful to the public without revealing sensitive information. EPA agrees that the difficulties of such reporting are considerable and outweigh the limited usefulness of generic information. EPA has dropped this requirement.

Commenters also expressed concern over the potential for releasing confidential business information (CBI) when sharing information obtained under CAIR within EPA and with other Federal agencies. EPA's security procedures under TSCA have adequately protected against release of confidential material during the Agency's 10-year administration of TSCA. All confidential data collected under the rule are subject to the requirements of the TSCA Confidential Business Information Security Manual and EPA's regulations at 40 CFR Part 2, Subpart B. EPA is also working with the participating agencies and will ensure that proper physical and procedural security plans are in place to protect confidential information collected under the rule. Also, before any transfer of CBI material, EPA will clear any individual who needs access to TSCA CBI information.

The final requirements for claiming CAIR data as CBI are summarized as follows:

1. Make assertions for claims of confidentiality at the time information is submitted.

2. Sign the confidentiality certification statement on the CAIR reporting form.

3. Provide EPA with two copies of the submission (one complete confidential version and one "sanitized" non-confidential version).

4. Mark the box on each question of the form with the appropriate letter(s) representing the category of information the claim is intended to protect.

5. Provide complete, detailed answers to substantiation questions for each of the categories of information claimed (see step 4 above), as well as to general questions that must be answered for all claims.

*F. The CAIR Reporting Form*

EPA has compiled a comprehensive list of questions in the CAIR reporting form consistent with the information types listed in TSCA section 8(a)(2). Since many kinds of information will be needed to support the variety of chemical risk identification, assessment, and control action functions of EPA and other Federal agencies, these questions vary in the type of information elements and comprehensiveness. For each listed substance, EPA will ask only those questions that are pertinent to planned risk identification, assessment, or control actions for that substance. Persons subject to the CAIR must answer only those questions listed for the substance in the matrix in Subpart D of the rule.

The reporting form is divided into 10 sections, each section containing a list of specific questions. The form covers: plant site information; chemical identification; production, processing, and importation volumes; physical/chemical properties; environmental fate data; economic and financial information; manufacturing and processing information; waste generation and management; worker exposure; and environmental release.

The reporting form also includes detailed instructions including sample answers. There are tables for converting numeric responses to metric units, and a glossary that defines key terms. Since

the proposal, the Agency has clarified some definitions and added some others.

Section 1 of the form must be completed by all respondents; the remaining parts are to be completed as specified in Subpart D of the rule. Questions in Section 1 ask for basic information, for example: plant site classification, respondent identification, and substance identification. Section 1 also contains questions for persons who sell or buy trade name products and a certification statement for persons who had previously submitted information requested in Subpart D.

Companies that *voluntarily* submit information to EPA or other Federal agencies are encouraged to use the CAIR form. If the substance they are reporting on is later added to the CAIR, these companies may be exempt from resubmitting the previously reported information. The companies would still be required to complete and submit Section 1 of the CAIR reporting form. However, the companies would be exempt from reporting any other data that were previously submitted, provided: that the previously submitted data are no more than 3 years old as of the effective date of the substance's addition to the rule, the data are still complete and accurate, and a copy of the previous submission is attached. Persons who use this exemption must sign the statement in Section 1 that certifies that the previously reported data meet the requirements set forth in the exemption.

At times, CAIR may be used to require reporting on the same substance more than once. Some respondents may have little or no change to report in the second submission; these companies can use the same exemption discussed above for voluntary reporting. Such respondents need only complete Section 1 of the reporting form, specify the date of the previous submission, and certify that the data are still complete and accurate. This exemption will eliminate duplicative reporting and reduce the burden on companies subject to reporting more than once on a listed substance.

The Agency has revised the form based on public comments. In general, EPA has made the form easier to complete by eliminating complex and unnecessary questions. However, questions that are likely to be asked in the future, though not requested in this iteration, remain on the form. The Agency has added clarifying language to the form to assist the respondent, and has also revised the instructions and glossary to add more sample answers and definitions. CAIR forms and instructions may be obtained by telephoning the TSCA Assistance Office at (202) 554–1404, or by writing to the TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

Some commenters were concerned that EPA will not have the staff to respond to the many questions the commenters anticipate will be asked during the reporting period. EPA assures the public that this will not occur. Persons who have general questions concerning the rule or reporting form may call the TSCA Assistance Office at (202) 554–1404. TDD: (202) 554–0551. The Agency has also established a CAIR Office staffed by persons who can answer technical questions on the requirements of the rule and the reporting form. When necessary, the TSCA Assistance Office will refer callers to the CAIR Office. Further, the questions of general interest asked during this time, and EPA's responses, will be summarized in a "Question and Answer" document. This document will be included with each CAIR form the Agency sends out starting with the second iteration of the CAIR.

## IV. Substances listed in this Final Rule

Two program offices in EPA and three other Federal agencies nominated 47 substances for the proposed rule. After thoroughly reviewing the candidates, two agencies have removed their requests, and EPA has reduced its own list of chemical candidates. The rule now contains 19 substances. The reasons for withdrawal of substances, a summary of the concerns for the remaining substances, and how the requested information will be used follows. The substances are listed in Subpart D, § 704.225, of the regulatory text. These are substances for which: (1) the agencies know or suspect cause adverse health or environmental effects yet lack current exposure data; (2) the agencies believe data gaps are significant; and (3) the agencies place a priority on the need for the requested information to complete assessments of the substances. The substances and the offices that nominated them are listed in Table I in this Unit of the preamble. Additional background information on the substances is in the public record for this rule.

Literature searches were undertaken for the information requested by the offices that nominated substances for this rule. A listing of the substances, along with the information requests, was sent for review to each office in EPA and other Federal agencies participating in the CAIR's development. These offices searched their records for information on the substances; however, the searches did not provide the needed information.

The following offices and agencies nominated the substances included in this final rule: EPA's Office of Air and Radiation (OAR), EPA's Office of Toxic Substances (OTS), and the National Institute for Occupational Safety and Health (NIOSH). A total of 23 nominations were made by these offices; however, since 4 of these nominations were multiple nominations (i.e., substances nominated by two offices), 19 substances are listed in this rule. Table I of this Unit of the preamble lists the 19 chemical substances.

The 19 substances listed in this rule include 7 hazardous substances regulated under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA requires persons who are in charge of vessels or facilities, to immediately notify the National Response Center ((800) 424–8802 or (202) 426–2675) when hazardous substances are released in quantities that are equal to or greater than the reportable quantities (RQs). (See CERCLA section 103 and 40 CFR Part 302; 50 FR 13456, April 4, 1985; 51 FR 34534, September 29, 1986.) CERCLA hazardous substances are listed in Table 302.4—List of Hazardous Substances and Reportable Quantities (50 FR 13475 and 51 FR 34541).

The Agency received many comments on the Federal government's justification for requesting reporting for some of the substances. For the final rule, the Agency has added additional background material on why the substances are listed in the rule, and what the requesting offices intend to do with the CAIR reported data.

The Consumer Product Safety Commission (CPSC) nominated eight substances for the proposed CAIR but dropped one substance (Urea, *N*-(4-chlorophenyl)-*N'*-(3,4-di-chlorophenyl)-, CAS No. 101–20–2) when it was determined that, although the substance was on the TSCA Inventory, it presently had no known TSCA uses and will subsequently be removed from the Inventory. CPSC dropped their remaining substances because of unexpectedly high costs to industry for compliance with CAIR, and because information gathered under the PAIR, the Federal Insecticide, Fungicide, and Rodenticide Act, and possibly, SARA, though not as detailed as CAIR information, will probably be sufficient for their needs.

The Occupational Safety and Health Administration (OSHA) had requested information on seven chlorinated solvents listed in the proposed CAIR when it was preparing a Notice of Proposed Rulemaking for one of them, Methylene Chloride (DCM). Because of the length of the CAIR rulemaking process and the current limitations on the scope of the evolving rule, OSHA proceeded with a survey of DCM. This survey included questions about the other chlorinated solvents frequently used as substitutes for DCM. Through its survey, OSHA compiled the material needed for its analysis of DCM. Thus, it has withdrawn its nomination of the seven chlorinated solvents.

NIOSH has requested information on one of the substances listed in the CAIR—4,4'-Methylenebis(-2-chloroaniline) (MBOCA) (CAS No. 101–14–4). MBOCA is a known animal carcinogen. Potential for occupational exposure exists because MBOCA is widely used as a curing agent in the production of cast polyurethane articles. OTS has promulgated a chemical-specific TSCA section 8(a) rule on MBOCA requiring notice to EPA of the initiation of any manufacture of MBOCA in the U.S. However, that rule will not provide the information NIOSH needs concerning exposures from current uses of imported MBOCA. All of the questions NIOSH requested pertain to identifying the number of workers exposed, degree of exposure, and extent of medical and environmental monitoring. This information is useful to NIOSH in identifying worker groups suitable for epidemiologic study and/or notification and screening programs. The extent of MBOCA use is difficult to characterize because not all polyurethane manufacturing plants use MBOCA, and those that do, use it in a variable proportion of their products. Although efforts have been made by OSHA, NIOSH, and EPA to characterize the extent of exposure to MBOCA, estimates of numbers of workers exposed have been very uncertain. The degree of worker exposure at facilities that use MBOCA in the manufacture of polyurethane products is also difficult to estimate because there is no centralized data collection of environmental and medical monitoring results.

NIOSH can use the data collected under CAIR to identify sites for several types of occupational health research studies, including industrial hygiene surveys, surveys on the efficacy of monitoring techniques, epidemiologic studies, and identification of sites for an industry-wide exposure registry. The CAIR data will also be used in formulating NIOSH recommendations for limiting occupational exposure to MBOCA. Given the potential for continued worker exposure in the processing of MBOCA, NIOSH believes that an ongoing and comprehensive assessment of worker exposure to MBOCA is warranted.

EPA's Office of Air Quality Planning and Standards (OAQPS) of the Office of Air and Radiation has requested information on five of the substances listed in the CAIR. They are four Toluene Diisocyanates (TDI isomers): Benzene, 1,3-diisocyanato-2-methyl- (CAS No. 91–08–7), Benzene, 2,4-diisocyanato-1-methyl- (CAS No. 584–84–9), Benzene, diisocyanatomethyl- (CAS No. 1321–38–6), Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471–62–5); and Chlorine (CAS No. 7782–50–5). The TDI isomers as a group of compounds present potential health treats and have large production volumes. All of the substances nominated are volatile and can be absorbed through the respiratory tract. Human effects that result from exposure to these substances can include potential carcinogenic, teratogenic, or mutagenic responses; extreme eye, lung, and mucous membrane irritation; or neurotoxic effects. The toxicity of these substances and their high level of production has raised concerns about the potential for human health effects from ambient air exposure. OAQPS needs detailed production and exposure information to determine whether these substances present an actual threat to human health.

Benzene, 1,3-diisocyanatomethyl- (CAS No. 26471–62–5) has been classified as a Group B2 carcinogen based upon the EPA Guidelines for Carcinogen Risk Assessment, September 24, 1986 (51 FR 33992). This classification indicates that there is sufficient evidence of carcinogenicity from animal studies. The potential health effects, other than cancer, associated with exposure to TDI isomers include respiratory effects (irritation/inflammation of the respiratory tract, pulmonary hypersensitivity, lung function decrements), dermal sensitization, and skin and eye irritation. The potential health effects associated with exposure to chlorine are eye and respiratory irritation at lower concentrations and pulmonary edema leading potentially to death at higher concentrations.

The data developed through reporting under the CAIR will be used to develop the exposure and risk analyses for these substances, thereby supporting decisions on the need to regulate these substances under the Clean Air Act (CAA).

OAQPS has dropped two of the substances (ammonia and propylene oxide) it nominated in the proposed rule because CAA regulatory evaluations are now essentially complete for these substances. In addition, OAQPS has dropped styrene because of the high costs to industry associated with reporting on this substance and the high number of burden hours which would be utilized.

OTS had requested information on 23 of the substances listed in the proposed CAIR. The substances had been nominated by two different divisions of OTS. Four of the substances were also among the group nominated by OAQPS.

The 17 substances nominated by the Exposure Evaluation Division (EED) have been dropped from this final rule. The substances fell under three categories: (1) fertilizers widely found in ground water, (2) volatile organic compounds found in ground water, and (3) some chlorinated solvents.

The fertilizers have been eliminated from this rule because these substances are no longer of high priority to EED. While EED remains concerned about the exposure potential of these substances, the resources may not be available to properly assess CAIR data if it were reported.

Data on the volatile organic compounds will probably be available following SARA section 313 reporting. It is likely that this information will be sufficient to meet the needs of EED, thus negating the need for CAIR data.

The SARA section 313 rule will also provide data needed by EED in their assessment of the chlorinated solvents. Further, data submitted to the Office of Air and Radiation under section 114 of the CAA has provided significant information on the major point sources of the chlorinated solvents. In addition, the chlorinated solvents project is expected to be completed before the data are expected under the CAIR. Finally, CAIR addresses manufacturers and processors, not the users of substances who are of most interest to the solvents project.

If, after the review of these alternative sources, EED decides that additional CAIR data are needed, EPA will review and promulgate reporting requirements and questions, or a subset of questions, listed in the proposed rule.

The Existing Chemical Assessment Division (ECAD) of OTS had nominated 18 of the OTS substances. ECAD has decided to withdraw one chemical substance, acid orange 7, because other higher priority efforts precluded further

work on this substance at this time. The 17 remaining substances fall within 5 groups, the first group includes acetamide (CAS No. 60–35–5) and Broenner's acid (CAS No. 93–00–5). Acetamide is a known animal carcinogen, and Broenner's acid may contain the impurity beta-naphthylamine, a known human carcinogen. Preliminary assessments had been conducted for both acetamide and Broenner's acid, but too little exposure-related information was available to proceed with an assessment. Human and environmental risk is largely unknown due to the lack of available exposure data. It is for this reason that EPA has requested such a broad range of information on these substances. Should subsequent assessments of these substances indicate potential risks, OTS will consider regulations to reduce identified risks where necessary.

The second group consists of certain substances found in human adipose tissue. These four substances are phenanthrene (CAS No. 85–01–8); ethanol, 2-chloro-, phosphate (3:1) (CAS No. 115–96–8); pyrene (CAS No. 129–00–0); and dimethyl disulfide (CAS No 624–92–0). These substances have come to the Agency's attention through the systematic screening of chemicals identified in human tissue samples and other environmental media. The widespread exposure demonstrated by these data from the National Human Monitoring Program, coupled with known information on the toxicity of these substances, warrants investigation of the possible sources of contamination. Manufacture, process, and use information needed to complete risk assessment of these substances is not available through other sources; the CAIR data will enable the exposure assessment to proceed without further delay. The exposure assessment, in turn, is a component of the broader risk assessment process conducted to determine if risk reduction alternatives need to be considered. These risk assessment and risk management activities will result in some type of risk reduction under TSCA, referral to another Agency program office or Federal agency, or a drop from further consideration because of low exposure potential, or low priority for other reasons.

The third group consists of four substances: hydroxylamine (CAS No. 7803–49–8) and three of its salts (CAS Nos. 5470–11–1, 10039–54–0, and 10046–00–1). The toxic properties of hydroxylamine are documented in OTS' Chemical Hazard Information Profile (CHIP) document (September 11, 1984). These include hematologic, genotoxic, and developmental effects. Exposure may occur during many possible uses of hydroxylamine and its salts. The best documented use is in color developer solutions, but the National Occupational Hazard Survey (NOHS) lists a wide variety of industries with potential hydroxylamine exposure. EPA has not been able to document actual use or the extent of use of hydroxylamines outside chemical processing, photo developing, and laboratory research. Furthermore, the Agency has little information on the amount of hydroxylamines in these known uses. Concern is warranted since the possible uses of hydroxylamines as antioxidants, for example, could cause widespread exposure.

The CAIR is intended to obtain information that verifies some of these suspected uses (or verifies that these uses are not widespread). The CAIR will also provide some information on amounts and concentrations of the hydroxylamine compounds in various uses, and exposure data. This information can be used to focus the Agency's efforts on hydroxylamine uses with highest exposures and determine whether these uses may present an unreasonable risk.

Preliminary risk evaluations were conducted by ECAD on the fourth group: semicarbazide (CAS No. 57–56–7), semicarbazide hydrochloride (CAS No. 563–41–7), and 1,1,2,2-tetrabromoethane (CAS No. 79–27–6). Semicarbazide and semicarbazide hydrochloride present carcinogenic, teratogenic, and acute health concerns. Only limited production, exposure, and use data are available for these two substances. Two manufacturers and one importer have been identified, but these substances are apparently produced for captive use by a number of companies. In addition, little information is available on the number of processors, their employees, and extent of employee exposure. Three uses have been reported, but other potential uses have been identified. These other uses may involve exposures of a greater magnitude or by a different route than those uses known to exist. Tetrabromoethane also raises carcinogenic health concerns in addition to causing acute and chronic liver, kidney, and lung effects. Until recently, production was nearly 5 million pounds per year, with nearly all used as a catalyst or catalyst initiator in the oxidation of p-xylene to produce terephthalic acid. Production has reportedly decreased substantially during the last 2 years, which mitigates the risk case. The information required in the CAIR will confirm this change in production needs and provide information on the use pattern.

Risk assessments are planned for the fifth and final group: the TDI isomers. These are the same substances nominated by OAQPS, and include two individual TDI isomers and two CAS numbers for mixed TDI isomers. Exposure to TDI has been associated with carcinogenic, respiratory, immunologic, dermal, and neurologic effects as well as isolated reports of hematologic and gastrointestinal symptomology. It is apparent that the observed effects are directly related to the exposure concentration, length of exposure, and the route of exposure.

OTS in coordination with OAQPS, NIOSH, and CPSC, has substantial concern for persons exposed to TDI in several situations. First, persons residing in the vicinity of TDI manufacturing, processing, and use facilities may be exposed to fugitive TDI emissions. Accordingly, OAQPS is issuing CAA section 114 letters to TDI manufacturers to obtain emissions information. OTS and OAQPS intend to share these data. CAIR questions to TDI producers that will be addressed through CAA section 114 letters have been withdrawn. Emissions data from non-producers (importers and processors) will continue to be sought through CAIR.

Clearly the projected regulatory endpoints, if any, for TDI cannot be suggested until all the data are available and analyses have been made. The extremely broad spectrum of applications for TDI-containing materials mandate that EPA perform detailed risk/benefit analyses regarding the TDI isomers. These, of course, require information that only industry can provide.

The second exposure of concern to OTS and NIOSH is occupational exposure to TDI through processing or use of TDI-containing materials. OTS will be sharing these CAIR-generated data with NIOSH. As appropriate, the American Conference of Governmental Industrial Hygienists (ACGIH) and OSHA will be advised of significant findings.

Lastly, both CPCS and OTS share interests in consumers potentially exposed to TDI through home use of publicly available consumer goods containing this diisocyanate. These products include sealants, coatings, adhesives, foam insulation, and polyurethane finishes. Any information obtained will be shared with CPSC.

The chemical list which cites the offices that nominated the substances follows.

TABLE I—CHEMICAL LIST

| Federal agency requesting information | Who must report | Coverage period | Questions selected |
|---|---|---|---|
| EPA/OTS/ECAD | M, X/P, I, P[4] | 2/8/87-2/5/89 | *Hydrazinecarboxamide* (CAS No. 57-56-7) 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06. |
| EPA/OTS/ECAD | M, I | 2/8/87-2/5/89 | *Acetamide* (CAS No. 60-35-5) 1, 2.01, 2.04 thru 2.06, 2.08, 2.12 thru 2.14, 2.17, 3.04, 9.04 thru 9.07. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Ethane, 1,1,2,2-tetrabromo-* (CAS No. 79-27-6) 1, 2.08, 2.12, 2.13. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Phenanthrene* (CAS No. 85-01-8) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06. |
| | | | *Benzene, 1,3-diisocyanato-2-methyl-* (CAS No. 91-08-7) |
| EPA/OAR [1] | M, I | 2/8/87-2/5/89 | |
| | X/P, P | 2/8/87-2/5/89 | 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23. |
| EPA/OTS/ECAD | M, I | 2/8/87-2/5/89 | *2-Naphthalenesulfonic acid, 6-amino-* (CAS No. 93-00-5) 1, 2.01, 2.04 thru 2.06, 2.08, 2.11, 2.12, 2.17, 3.04, 4.01, 9.07, 10.05, 10.06. |
| NIOSH [3] | X/P, P | 2/8/87-2/5/89 | *Benzeneamine, 4,4'*-methylenebis[2-chloro- (CAS No. 101-14-4) 1, 9.01, 9.03, 9.06, 9.08, 9.12, 9.15. |
| EPA/OTS/ECAD | M, I | 2/8/87-2/5/89 | *Ethanol, 2-chloro-, phosphate* (3:1) (CAS No. 115-96-8) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06. |
| EPA/OTS/ECAD | M, I | 2/8/87-2/5/89 | *Pyrene* (CAS No. 129-00-0) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Hydrazinecarboxamide, monohydrochloride* (CAS No. 563-41-7) 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06. |
| | | | *Benzene, 2,4-diisocyanato-1-methyl-* (CAS No. 584-84-9) |
| EPA/OAR | M, I | 2/8/87-2/5/89 | 1 |
| | X/P, P | 2/8/87-2/5/89 | 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23. |
| EPA/OTS/ECAD | M, I | 2/8/87-2/5/89 | *Disulfide, dimethyl* (CAS No. 624-92-0) 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06. |
| | | | *Benzene, diisocyanatomethyl-* (CAS No. 1321-38-6) |
| EPA/OAR | M, I | 2/8/87-2/5/89 | 1 |
| | X/P, P | 2/8/87-2/5/89 | 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06, 10.08. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Hydroxylamine, hydrochloride* (CAS No. 5470-11-1) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01. |
| EPA/OAR | M | 2/8/87-2/5/89 | *Chlorine* (CAS No. 7782-50-5) 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Hydroxylamine* (CAS No. 7803-49-8) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Hydroxylamine, sulfate* (2:1) (CAS No. 10039-54-0) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | *Hydroxylamine, sulfate* (1:1) (CAS No. 10046-00-1) 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01. |
| | | | *Benzene, 1,3-diisocyanatomethyl-* (CAS No. 26471-62-5) |
| EPA/OAR | M,I | 2/8/87-2/5/89 | 1 |
| | X/P, P | 2/8/87-2/5/89 | 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.06, 10.08. |
| EPA/OTS/ECAD | M, X/P, I, P | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23. |

[1] EPA/OAR = Environmental Protection Agency—Office of Air and Radiation.
[2] EPA/OTS/ECAD = Environmental Protection Agency—Office of Toxic Substances—Existing Chemical Assessment Division.
[3] NIOSH = National Institute for Occupational Safety and Health.
[4] M = Each Person Who Manufactured the Substance for Commercial Purposes.
I = Each Person Who Imported the Substance for Commercial Purposes.
P = Each Person Who Processed the Substance for Commercial Purposes.
X/P = Each Person Who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name.

## V. CAIR Information Management

EPA has developed a data base to store all of the reported CAIR information in a manner that allows EPA to determine easily whether the required data have already been collected under the CAIR, to produce reports in standard formats, and to protect proprietary information. The data base is an essential component of CAIR information management. Offices considering the development of information-gathering rules will be able to check the CAIR data base before requesting the information from

industry. This procedure will help reduce duplicative requests. Further, reported data will be available quickly and in an appropriate format for the user's review.

Commenters on the proposed rule expressed concern about EPA's ability to manage the quantity of data that the CAIR will generate. EPA plans to devote substantial resources for the implementation of the CAIR. While the CAIR will produce a significant amount of data, EPA has the necessary systems and personnel to process the volume of data generated by the CAIR. EPA has experience with processing large amounts of data from the TSCA section 8(a) PAIR, and IUR reporting, and will be able to both process CAIR data and make it available as needed.

## VI. The CAIR and Other Information-Gathering Mechanisms

The comprehensive nature of the CAIR and the reporting form allow EPA in many instances to gather information for offices in EPA and other Federal agencies. However, the CAIR is not being promulgated as a replacement for all other information-gathering regulations, nor has any other office delegated its information-gathering authority to the CAIR. The CAIR will be used only when it is appropriate and is the most efficient means to gather information. Other agencies or EPA offices will use their own authority under circumstances such as: (1) the substance of interest cannot be regulated under TSCA (e.g., the substance is not a "chemical substance" or "mixture" as defined in section 3 of TSCA); (2) the information being sought could be gathered more efficiently using another authority; or (3) the information being sought is more specific and detailed than would be elicited by the questions in the CAIR reporting form. Therefore, while other offices within EPA and other agencies will consider utilizing the CAIR for information-gathering, EPA does not expect the CAIR to be a replacement for all data-gathering regulations.

## VII. Implementation of the Rule

### *A. The Need for Information*

Prior to listing the 19 substances in this rule, EPA searched for the requested information to determine if the information was already available. Each office and agency involved in developing the CAIR searched for this information in their data bases and the public literature; they were, however, unable to locate the requested information listed in Subpart D of this rule.

EPA has established a formal process whereby each office or agency that wants to add a substance to the CAIR must submit detailed nomination material to OTS (the nomination material for the substances in this final rule consist of memoranda to the public record with relevant support documents). The nomination must include: why the information is needed, how the nominating office will use the reported data, and any other pertinent information the Agency deems necessary. OTS will then determine whether the substance is a potential candidate for the CAIR.

Substances that pass OTS' initial screening will be submitted to an inter-agency, government-wide workgroup for review. As was done for the substances in this final rule, the workgroup (made up of representatives from program offices in EPA and other Federal agencies) reviews the list of substances and information requests. If needed information is available, the requesting office is notified and the substance withdrawn from the list of potential candidates for addition to the CAIR. Comments provided by the public on the chemical substance nominated in a proposed rule may also lead to the withdrawal of the substance or revised information requests.

### *B. Budgeting for Burden*

EPA has prepared an information collection request that estimates the reporting burden that the CAIR would impose. The Paperwork Reduction Act requires EPA to collect information from the public in the least burdensome way and to summarize, for the Office of Management and Budget's (OMB) review, information collection activities and their associated burden. As part of this process, an Information Collection Budget (ICB) is developed that estimates the total number of burden hours the Agency will impose on the public during the next fiscal year.

CAIR is included in this budget process. In June of each year, each program office participating in CAIR will submit an ICB profile to the Information and Regulatory Systems Division (IRSD) in EPA's Office of Policy, Planning and Evaluation. This profile will contain the estimated number of substances on which the program expects to request data, the total burden hours associated with the request, and, if possible, the names of the substances involved. Based on this profile, each program office will have a CAIR line item on the ICB containing that office's total burden hours for CAIR requests. Making each EPA office accountable for the burden they impose through the CAIR will ensure that they use the rule judiciously.

For the substances listed in this final rule, the OTS has budgeted for the burden hours for its substances along with the substances added by NIOSH. (OAR has accounted for its own substances.) In the future, each EPA office that adds a substance to the CAIR will account for the burden hours as described above while other agencies that add substances to CAIR will account for the burden hours in their own ICB.

Some commenters suggested that the CAIR will dramatically increase the government-wide reporting burden placed on industry each year and, in an effort to reduce this effect, EPA should not continue with the CAIR. EPA does not agree with these commenters' conclusions regarding the increased reporting burden. First, if EPA did not continue with the CAIR, the burden hours allocated for the rule would be available elsewhere in the Agency for use. Thus, there would be no net difference in the burden placed on industry by EPA if the CAIR is or is not promulgated. Second, the Agency has developed CAIR as an efficient information-gathering tool that should require less burden to comply with over time than separate rules gathering the same information. That is, more information can be collected at the same or less cost using the CAIR than using individual information-gathering rules.

### *C. Assistance for Submitters*

Given the comprehensive nature of some questions in the CAIR reporting form, EPA is committed to providing technical assistance to companies reporting for the CAIR. Besides the instruction document that accompanies the reporting form, companies will be able to contact EPA or its contractor for assistance. An assistance office has been established to answer questions regarding the CAIR and will be staffed by a team of information specialists who are thoroughly familiar with the rule requirements and reporting form.

For the second iteration of CAIR, the Agency will compile and distribute a summary of "Questions and Answers" asked by submitters. The Agency has also developed a brochure that explains how the CAIR operates. Copies of this brochure are available from the TSCA Assistance Office.

### *D. Evaluation*

To ensure that the CAIR meets its objectives of providing timely, reliable, useful, and non-duplicative data while imposing a minimum burden on

industry, EPA has and will continue to evaluate the CAIR. The Agency has conducted a review of the final rule package to assure that there is adequate documentation to justify each information request.

The Agency has also reviewed the effectiveness of the nominating process in meeting the requirements of the Paperwork Reduction Act. Since the nomination process is standard for OTS, this review involved all OTS ICRS, including the CAIR. It is also the Agency's intention to evaluate the data submitted under the CAIR by reviewing forms for apparent inconsistencies and surveying submitters to determine problem areas.

Finally, a survey of data users both within EPA and at other agencies that nominated listed substances will be conducted. Interviews with a sample of users will be conducted to assure that the data submitted meet the needs of the user. A special report will be prepared that will examine any problem with timeliness of data receipt and determine if the levels of precision and specificity have been met.

## VIII. Public Participation

EPA believes that the public review that occurred during the development of this rule was important. The Agency actively sought public input early in the developmental stages of the rule and met with all organizations requesting a meeting. Two general public meetings were held in July of 1985 to discuss an early draft of the rule and reporting form. Constructive comments helped EPA refine the rule to make it more understandable and effective. After further revisions, the CAIR reporting form was circulated again for public review in December 1985. Again, more constructive comments were made and many were adopted.

EPA issued a notice on January 24, 1986 (51 FR 3251), asking for participation in a pretest of the reporting form. The purpose of the pretest was two-fold: (1) to test whether the questions are easily understood, and (2) to estimate the reporting burden associated with answering questions. The Agency had hoped many volunteers would participate. However, fewer applied than were expected. Therefore, the Agency does not view the results of this pretest as representative of the entire industry. The pretest did, however, provide extremely valuable "hands-on" data that were used in making changes to the form and for determining the economic impact of this rule.

After publication of the proposed rule (51 FR 35762), EPA extended the public comment period. The Agency appreciates all of the comments that have been made, and this final rule reflects EPA's consideration of those comments.

## IX. Alternatives Considered

Before and during the development of the CAIR, the Agency considered three major alternative approaches for meeting its information-gathering objectives: (1) issuing chemical-specific TSCA section 8(a) rules, (2) issuing the CAIR list of questions as guidelines for incorporation in chemical-specific rules, and (3) developing a three-tier approach to reporting (of which parts of CAIR would comprise the first two tiers). After review of these approaches, the Agency decided to develop the CAIR as proposed.

Chemical-specific rules, unlike the CAIR, can be tailored to meet very specific needs. However, as discussed above, these rules are costly for EPA to establish and implement, and for industry to respond to. If specific information is needed that is beyond the scope of CAIR, the Agency always has the option of issuing a chemical-specific rule for that substance.

A variation of the chemical-specific option would be the issuance of the CAIR list of questions as guidelines. Whenever an information need arose, questions from the guidelines could be chosen and incorporated into a chemical-specific rule. An advantage of this option is that the guidelines could be modified as necessary without notice and comment.

The Agency has determined that such an option would be less desirable than issuance of a model rule because many of the efficiencies offered by a model rule would be diminished or lost. There would be a diminished incentive to use the questions exactly as they are written. The additional variability industry would face with such minor changes would impose substantial costs to industry in responding to each chemical-specific rule. Also, chemical-specific rules would require substantial additional space in the **Federal Register** since the questions would have to be stated in full rather than simply specified by number under the CAIR.

Furthermore, there is no need to issue CAIR questions as guidelines. Many of the questions were taken from existing government forms previously used to collect information from industry. There has also been much cooperation with industry representatives in developing the form so that the questions will both provide the information needed to EPA and be in the terminology used by industry. EPA does not anticipate that a major refinement of the questions will be necessary after promulgation of this final rule. Moreover, should the need arise, EPA can develop a TSCA section 8(a) chemical-specific rule with questions tailored to the unique characteristics of the requesters.

The last option that many commenters suggested was that EPA consider gathering information according to the stage of assessment of a substance. That is, for substances in the early stages of assessment, request only basic information like that found in the PAIR. If, following analysis of the reported data, the Agency finds that additional information is needed, a more detailed substance-specific rule would be used.

EPA does not believe a tiered reporting approach is necessary or appropriate; in fact, such a reporting scheme could be counterproductive since it could involve two or three separate complete rulemakings that would be costly to EPA in terms of Agency resources and delays in obtaining the needed information. Whereas a tiered reporting approach might be feasible if the CAIR was solely an OTS rule, the applicability of the CAIR to other program offices within EPA other than OTS, as well as to other Federal agencies, makes a tiered reporting approach impractical. The broad range of topics covered by the CAIR is one of the primary benefits derived from the rule. An office or agency can choose specific questions on the CAIR according to its particular stage of assessment.

## X. Economic Analysis

### *A. Methodology*

EPA has conducted in-depth studies to estimate the amount of secretarial, technical, and managerial time needed to respond to each question in the reporting form. These studies are located in the public record for this rulemaking.

The response times were derived from three major sources. One source was the set of Federal personnel experienced in preparing questionnaires that contained questions similar to those in the reporting form. Another source was Federal agency documents that described and analyzed questionnaires that contained questions similar to those in the reporting form. The last source was persons in private industry and industry research organizations who performed surveys with questionnaires similar to the CAIR form. These persons provided estimates of the time required to respond to certain parts of the reporting form. The Agency also used a

pretest of the CAIR form to determine the time required to complete various questions on the reporting form.

The question-specific reporting burden was estimated for each of three distinct labor categories: managerial, technical, and secretarial. Mean reporting times and variances were then calculated for each labor category. Applicable wage rates were then multiplied by the time estimates and the results were summed to establish the estimated reporting cost per question. Combining the cost per question for all the questions required of each type of respondent yielded both a mean reporting cost and a 90-percent confidence level cost range. This procedure was followed for each chemical substance listed in Subpart D. The mean reporting costs (i.e., unit costs) were further multiplied by the estimated number of respondents for each substance to determine the direct reporting cost of the rule.

EPA used the 1987 update of the TSCA Inventory data base as its primary source of plant sites that manufacture and/or import CAIR-listed substances. This provided the latest site counts for all CAIR substances except chlorine. (Chlorine, an inorganic chemical, was not included in the Inventory update.) Additional data sources were consulted to establish site count estimates for chlorine and to double-check estimates for the remaining CAIR substances. The Agency reviewed the following sources, among others: *Chemical Economics Handbook, Directory of Chemical Producers, Importers of Benzenoid Chemicals and Products, Synthetic Organic Chemicals, Chemical Products Synopsis, Million Dollar Directory, Market Identifiers,* and the Census Bureau's *Census of Manufacturers.* Articles from recent trade magazines and journals, as well as contacts with a variety of industry personnel, were also used to identify plant sites.

To identify the plants that process the substances, data were collected on the downstream uses of each listed substance for which processor reporting is required. All those facilities that were strictly end users of listed substances were not considered to be processors for this rule.

The final step associated with developing the site estimates was to determine the number of "unique sites"; that is, those sites that must report. Since a site with multiple processes may be required to report for more than one substance, it is most important not to count that site more than once. Adjustments of site estimates were based on an examination of the specific identities and chemical operations of expected submitters.

Once site estimates were established, estimating a per substance cost for each respondent type was then a simple matter. The estimated number of sites per respondent category was multiplied by the appropriate estimated reporting cost per substance. In turn, the reporting costs per substance were summed to provide the total direct reporting cost of the rule.

Reporting sites also incur a variety of indirect reporting costs. These involve such activities as familiarization with the rule and its reporting requirements, the establishment and maintenance of a recordkeeping system, notifying EPA and/or customers of any trade names, the cost of substantiating any information claimed to be confidential, and the miscellaneous costs associated with reviewing, copying, and mailing the completed CAIR reporting form. In each case, research was conducted to determine the appropriate unit cost (per report or per site) of each indirect cost category. (Two sets of unit costs were established in this analysis, one for a respondent answering a large number of questions and the other for a respondent answering a small number of questions.) After unit costs were multiplied by the appropriate number of sites and reports, the results were summed to produce the total indirect reporting cost of the rule.

The final step in determining the total cost of the rule was to estimate the cost incurred by firms that must assess whether they are required to report. Two steps were required to calculate this compliance determination cost. The first step was to identify the number of sites that are exempt from reporting requirements. The second step was to estimate the cost of making a compliance determination.

Those sites that do not manufacture, import, or process a listed substance are obviously not covered by the CAIR. The same is true of those sites that only use a CAIR substance. While keeping these points in mind, the list of CAIR substances was reviewed to determine the set of Standard Industrial Classification (SIC) codes likely to contain the sites subject to CAIR reporting or be exempt from reporting. The establishment counts in SIC 28, 29, 516, 2295, 2515, 3069, 3086, and 5198 were tallied, and the sum was then reduced by the number of sites listed as small businesses having annual sales under $4 million. (These sites are also exempt from CAIR reporting requirements.) The adjusted sum was further reduced by the estimated number of sites that would report in the initial reporting period. A total of 14,855 exempt sites was ultimately established.

The second step was to estimate the unit cost of compliance determination. A variety of industry and Agency sources were consulted to establish a range of time (required by labor category) needed to determine that reporting is not required. The time estimates were then multiplied by appropriate labor rates to provide a range of compliance determination costs. A unit cost of $33 per site was selected from the range after it was determined to be most applicable. (It was necessary to allocate to the form familiarization cost category the compliance determination cost incurred by a site that must report under the CAIR. Since the review of reporting requirements that makes up a compliance determination is also a necessary part of form familiarization, this allocation was done to prevent double counting of costs.) The exempt site count was then multiplied by the unit cost of compliance determination to provide the final cost component of the CAIR.

Performing the set of calculations described above yields an estimated total cost for the 19 currently listed substances of $2.3 million. These costs are broken down into direct reporting costs, indirect reporting costs, and compliance determination costs. The total direct reporting cost is estimated to be $1.23 million. The total indirect reporting cost is estimated to be $560,788. The total compliance determination cost is estimated to be $490,215 for the 14,855 sites exempted from reporting requirements.

Based on the information collection requirements in this rule and the set of CAIR listed substances, the Agency calculated the expected costs of a typical responding site that would incur all possible costs. (Not all sites will incur such costs as CBI substantiation and trade name notification. Moreover, these expected costs are averages and may not actually match the cost of a specific site. Thus, the costs presented below will be somewhat different from those derived by dividing total line item costs by the number of responding sites or supplied reports.)

*per report:*

| | |
|---|---|
| 150 hours to gather and report the requested information | $5,092 |
| 17 hours to substantiate CBI claims | $680 |
| 8 hours to conduct trade name notification | $360 |
| 11 hours to establish and file the records that support a reporting effort | $238 |
| 1.5 hours to incur miscellaneous costs (mailing, etc.) | $70 |

*per site:*

43 hours for rule and form familiarization.....$1,490

EPA assumes that the per site costs will be incurred one-time only for those respondents that submit two or more reports per site in any given reporting year. Only the per report costs will be incurred for each report submitted by a responding site. EPA further assumes that sites which must report in a following year will incur only a portion of the initial reporting year's per site costs. This is due to the expected increase in rule familiarization and understanding as the reports are prepared over a period of time. This may in fact not be entirely true in those cases in which a respondent must answer a small number of questions and, as a result, may not learn the entire reporting form.

*B. EPA Administrative Costs*

EPA will incur a variety of costs to process and maintain the information provided under the CAIR. This section briefly describes the costs associated with the Agency's administration of this rule.

EPA has developed a system to process and maintain the CAIR information. The major tasks in this overall effort are performing a feasibility study, and developing a data entry system, data base system, and tracking system. The initial system design and development costs are estimated to be $445,000. There will be an additional cost of $65,000 for the development of standardized reports for CAIR data users.

EPA also expects to incur costs associated with entering and processing data for the initial 19 chemicals, administrating the CAIR information office, and several other projects. These activities are estimated to cost $444,000.

In addition to the costs shown above, EPA will incur staff costs for these rule-related activities. Approximately 5.4 full-time equivalents (FTEs) will be required in the implementation of the initial CAIR. At $32,000 per FTE, the total of 5.4 FTEs will cost EPA $172,800.

Thus, it is assumed that EPA's expenditures for the development and implementation of this final rule will be roughly $954,750 plus a total of $172,800 in staff costs. This yields a total cost to EPA of $1,127,550.

*C. Response to Comments on Economic Analysis*

A variety of comments were received on the proposed CAIR. Among these comments were a set that specifically addressed cost estimates. In general, these comments all argued that EPA's cost estimate was considerably below the cost industry officials believed would be incurred. Listed below are the major comments addressing economic issues and the EPA response. More detailed responses can be found in the rulemaking record.

A number of commenters stated that the unit labor rates EPA used were far below the levels found in industry today. It was argued that hourly wages were too low and that labor overhead should also be included in cost estimates. It was also argued that the use of only three labor categories (managerial, technical, and clerical) tended to bias downward the cumulative cost of the work performed by all the different types of personnel involved in filling out the CAIR reporting form.

The Agency agrees with these general comments and has taken two major steps to address the concerns. First, EPA factored inflation levels since March 1984 into the set of wage rates used to cost out the proposed CAIR. The unit labor costs were based on March 1984 data and, therefore, needed to be updated. Second, the Agency realized that industry responses to government health and environmental reporting requirements tend to be prepared by senior level personnel from a variety of backgrounds (financial, legal, and operational). Thus, the Agency used different and more senior labor cost categories from Bureau of Labor Statistics data in establishing the new unit labor rates for the economic analysis. These two major adjustments resulted in hourly wage rate increases of 27.3, 35.3, and 11.2 percent for managerial, technical, and clerical personnel, respectively.

The Agency does not agree that labor overhead should be factored into the cost estimates. The allocation of any overhead expenses to CAIR reporting activities is an arbitrary exercise. This is especially true because the indirect reporting costs that might be classified as overhead are addressed as separate line items in the cost estimates prepared for the final rule. As an illustration, the indirect reporting costs associated with the establishment of a support document recordkeeping system are now shown as a distinct line item in the economic analysis.

Other commenters argued that EPA underestimated the total number of chemical processors that might be subject to reporting requirements, and thereby further underestimated the possible total cost of the rule. As an illustration, it was argued that the count used by EPA for the number of ammonia processors and solvent processors was too low. Commenters also argued that EPA's site counts for non-sample substances were low in some cases.

The Agency agrees with these comments in general. The Agency chose a group of sample substances to be representative, in terms of manufacturing operations, of the set of substances currently listed on the CAIR. The Agency conducted a comparison of the sample and non-sample substances and determined that the samples are representative of the total set in terms of chemical type, annual production volume, and the number of manufacturing sites.

The analysis prepared for the proposed CAIR estimated a total of roughly 298,000 processing sites for the 15 sample substances. Follow-up work using additional primary and secondary data sources resulted in an increase in the count of processing sites to roughly 308,700 sites. With respect to the site counts for the non-sample substances, these estimates were derived from the data collected on the sample substances. Thus, they were only to be representative, not specific. The adjustments made to the site counts for the sample substances should result in more accurate site counts for non-sample substances.

Some commenters believed that EPA underestimated the time and effort required to complete the CAIR reporting form. They argued that far more time would be required to collect data from scattered sources, to coordinate form analysis and response efforts between different personnel, and to actually develop responses to various questions on the form. With respect to this last issue, commenters argued that EPA failed to account for the additional reporting burden incurred by firms that do multiple processing of CAIR substances, have multiple work areas, or have multiple emission points. It was also argued that these firms would ostensibly be required to provide multiple responses to various questions on the reporting form.

The Agency agrees with these points. As a result, additional cost line items were added to account for the activities that had not been considered in the proposed rule's economic analysis. The new cost line items are compliance determination, review and mailing of the final reporting form, collection and calculation of data required by CAIR form questions, and several other miscellaneous costs associated with form preparation. In addition, revisions were made to the estimated costs for CBI substantiation, form familiarization,

recordkeeping, and trade name notification. The result of these changes, plus the revised site counts and unit labor rates mentioned above, was an increase in the estimated total cost from $3.27 million to roughly $23.9 million. However, this cost was then reduced significantly by factoring in the exemptions used in the final rule and by the change in the number of substances on the rule from 47 for the proposed rule to 19 for this final rule.

### XI. Rulemaking Record

The following documents constitute the major documents in the record for this rule (docket control number OPTS–82013C). All documents, including the index to the complete record, are available to the public in the TSCA Public Docket Office from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. NE–G004, 401 M Street, SW., Washington, DC 20460. The record includes but is not limited to the following information:

1. **Federal Register** Notices: (April 4, 1985; 50 FR 13391), (June 17, 1985; 50 FR 25095), (January 24, 1986; 51 FR 3251), (February 28, 1986; 51 FR 7120), and (December 19, 1986; 51 FR 45486).

2. Transcript of public meeting held on July 17, 1985.

3. Transcript of public meeting held on July 30, 1985.

4. Minutes of meetings held with the Chemical Manufacturers Association, the Synthetic Organic Chemical Manufacturers Association, and the American Petroleum Institute.

5. Copy of memorandum and CAIR reporting form circulated to the public for review on December 9, 1985.

6. CAIR reporting form response times and labor costs analysis, Centaur Associates, April 21, 1986.

7. Economic analysis of the CAIR.

8. Comments received on earlier drafts of the CAIR preamble and reporting form.

9. Background information on substances appearing in the proposed and final rule.

10. Proposed Rule October 7, 1986; 51 FR 35762.

11. Comments received on the proposed rule.

12. CAIR Pretest Summary Report, Science Applications International Corporation, March 20, 1987.

13. Correspondence with and from the public regarding CAIR.

14. Minutes of meeting held with industry, environmental, and labor organizations on February 26, 1986.

15. Minutes of meeting with representatives from the Chemical Manufacturers Association, the Office of Management and Budget, and the Environmental Protection Agency held on August 6, 1987.

16. Response to Comment document.

17. Final CAIR Reporting Form and Instructions.

### XII. REGULATORY ASSESSMENT REQUIREMENTS

#### *A. Executive Order 12291*

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. The Agency has determined that this final rule is not "major" because it does not have an effect of $100 million or more on the economy. EPA also anticipates that this rule will not have a significant effect on competition, costs, or prices. This rule was submitted to the OMB for review as required by Executive Order 12291.

#### *B. Regulatory Flexibility Act*

Under the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant impact on a substantial number of small businesses. Small businesses are defined in this rule and are exempt from reporting except under certain circumstances defined in TSCA.

#### *C. Paperwork Reduction Act*

The information collection requirements in this rule were submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* and have been assigned OMB control number 2010–0019.

Public reporting burden for this collection of information is estimated to vary as presented in the following chart. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. To locate a respondent's burden estimate on the chart, identify the substance's CAS number and the respondent category for which the report is being submitted, and locate the corresponding range. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

CAIR Reporting Burden for Both Question-Specific and General Costs (Range in Hours)

| Chemical name | CAS No. | Manufacturer | Importer | Processor | Manufacturer / processor | Importer / processor |
|---|---|---|---|---|---|---|
| Hydrazinecarboxamide | 57-56-7 | 39-47 | 39-47 | 41-49 | 44-56 | 41-50 |
| Acetamide | 60-35-5 | 45-57 | 45-57 | NA | 61-79 | 51-65 |
| Ethane, 1,1,2,2-tetrabromo- | 79-27-6 | 37-41 | 37-41 | 37-41 | 37-42 | 37-41 |
| Phenanthrene | 85-01-8 | 40-47 | 40-46 | 40-48 | 44-54 | 41-49 |
| Benzene, 1,3-diisocyanato-2-methyl- | 91-08-7 | 194-231 | 98-114 | 268-316 | 403-466 | 266-315 |
| 2-Naphthalenesulfonic acid, 6-amino- | 93-00-5 | 44-54 | 44-54 | NA | 55-72 | 48-61 |
| Benzeneamine, 4,4'-methylenebis[2-chloro- | 101-14-4 | NA | NA | 47-60 | 55-72 | 47-60 |
| Ethanol, 2-chloro-, phosphate (3:1) | 115-96-8 | 40-47 | 40-46 | NA | 44-54 | 41-49 |
| Pyrene | 129-00-0 | 40-47 | 40-46 | NA | 44-54 | 41-49 |
| Hydrazinecarboxamide, monohydrochloride | 563-41-7 | 39-47 | 39-47 | 41-49 | 44-56 | 41-50 |
| Benzene, 2,4-diisocyanato-1-methyl- | 584-84-9 | 194-231 | 98-114 | 268-316 | 403-466 | 266-315 |
| Disulfide, dimethyl | 624-92-0 | 40-47 | 40-46 | NA | 44-54 | 41-49 |
| Benzene, diisocyanatomethyl- | 1321-38-6 | 196-233 | 100-116 | 270-320 | 407-471 | 269-318 |
| Hydroxylamine, hydrochloride | 5470-11-1 | 37-42 | 38-43 | 38-43 | 39-44 | 38-43 |
| Chlorine | 7782-50-5 | 55-79 | NA | NA | 91-128 | NA |
| Hydroxylamine | 7803-49-8 | 37-42 | 38-43 | 38-43 | 39-44 | 38-43 |
| Hydroxylamine, sulfate (2:1) | 10039-54-0 | 37-42 | 38-43 | 38-43 | 39-44 | 38-43 |
| Hydroxylamine, sulfate (1:1) | 10046-00-1 | 37-42 | 38-43 | 38-43 | 39-44 | 38-43 |

CAIR REPORTING BURDEN FOR BOTH QUESTION-SPECIFIC AND GENERAL COSTS (RANGE IN HOURS)—Continued

| Chemical name | CAS No. | Manufacturer | Importer | Processor | Manufacturer/ processor | Importer/ processor |
|---|---|---|---|---|---|---|
| Benzene, 1,3-diisocyanatomethyl- | 26471-62-5 | 196-233 | 100-116 | 270-320 | 407-471 | 269-318 |

**List of Subjects in 40 CFR Part 704**

Chemicals, Environmental protection, Hazardous materials, Reporting and recordkeeping requirements.

Dated: October 27, 1988.

**Lee M. Thomas,**

*Administrator.*

Therefore, 40 CFR Part 704 is amended as follows:

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

## PART 704—REPORTING AND RECORDKEEPING REQUIREMENTS

2. By revising the Part heading to read as set forth above.

### Subpart A—General Reporting and Recordkeeping Provisions for Section 8(a) Information-Gathering Rules

3. By revising the Subpart A heading to read as set forth above.

4. By revising §§ 704.1, 704.3, and 704.5 to read as follows:

**§ 704.1 Scope.**

(a) This Part specifies reporting and recordkeeping procedures under section 8(a) of the Toxic Substances Control Act (TSCA) for manufacturers, importers, and processors of chemical substances and mixtures (hereafter collectively referred to as substances) that are identified in Subpart B or D of this Part. The reporting and recordkeeping provisions in Subpart A of this Part apply throughout this Part unless revised in any other subpart.

(b) Subpart B of this Part sets out chemical-specific reporting and recordkeeping requirements under section 8(a) of TSCA.

(c) Subpart C of this Part sets out the general reporting provisions for the Comprehensive Assessment Information Rule (CAIR). CAIR standardizes certain section 8(a) rules by: providing a set of uniform questions for EPA and other agencies to use in assembling specific reporting requirements; requiring the submission of information on a standard reporting form; and establishing uniform reporting and recordkeeping provisions that supplement the reporting and recordkeeping provisions in Subpart A of this Part. CAIR provisions apply only to those persons who manufacture, import, or process a substance identified in Subpart D of this Part during the time period for which reporting is required.

(d) Subpart D of this Part contains a matrix that identifies the substances for which EPA requires reporting under Subpart C, the persons who must report the information to EPA, the information that must be reported, the coverage period (as that term is defined in § 704.203), and the effective date of the final rule.

**§ 704.3 Definitions.**

All definitions as set forth in section 3 of TSCA apply in this Part. In addition, the following definitions are provided for the purposes of this Part.

"Annual" means the corporate fiscal year.

"Article" means a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end use function(s) dependent in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition which have no commercial purpose separate from that of the article, and that result from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles; except that fluids and particles are not considered articles regardless of shape or design.

"Byproduct" means a chemical substance produced without a separate commercial intent during the manufacture, processing, use, or disposal of another chemical substance(s) or mixture(s).

"CAS Number" means Chemical Abstracts Service Registry Number.

"Coproduct" means a chemical substance produced for a commercial purpose during the manufacture, processing, use, or disposal of another chemical substance or mixture.

"Customer" means any person to whom a manufacturer, importer, or processor directly distributes any quantity of a chemical substance, mixture, mixture containing the substance or mixture, or article containing the substance or mixture, whether or not a sale is involved.

"Domestic" means within the geographical boundaries of the 50 United States, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and any other territory or possession of the United States.

"Enclosed process" means a manufacturing or processing operation that is designed and operated so that there is no intentional release into the environment of any substance present in the operation. An operation with fugitive, inadvertent, or emergency pressure relief releases remains an enclosed process so long as measures are taken to prevent worker exposure to and environmental contamination from the releases.

"EPA" means the United States Environmental Protection Agency.

"Import" means to import for commercial purposes.

"Import for commercial purposes" means to import with the purpose of obtaining an immediate or eventual commercial advantage for the importer, and includes the importation of any amount of a chemical substance or mixture. If a chemical substance or mixture containing impurities is imported for commercial purposes, then those impurities also are imported for commercial purposes.

"Import in bulk form" means to import a chemical substance (other than as part of a mixture or article) in any quantity, in cans, bottles, drums, barrels, packages, tanks, bags, or other containers, if the chemical substance is intended to be removed from the container and the substance has an end use or commercial purpose separate from the container.

"Importer" means (1) any person who imports any chemical substance or any chemical substance as part of a mixture or article into the customs territory of the United States, and includes:

(i) The person primarily liable for the payment of any duties on the merchandise, or

(ii) An authorized agent acting on his behalf (as defined in 19 CFR 1.11).

(2) Importer also includes, as appropriate:

(i) The consignee.

(ii) The importer of record.

(iii) The actual owner if an actual owner's declaration and superseding bond have been filed in accordance with 19 CFR 141.20.

(iv) The transferee, if the right to draw merchandise in a bonded warehouse has been transferred in accordance with Subpart C of 19 CFR Part 144.

(3) For the purposes of this definition, the customs territory of the United States consists of the 50 States, Puerto Rico, and the District of Columbia.

"Impurity" means a chemical substance which is unintentionally present with another chemical substance.

"Intermediate" means any chemical substance that is consumed, in whole or in part, in chemical reactions used for the intentional manufacture of other chemical substances or mixtures, or that is intentionally present for the purpose of altering the rates of such chemical reactions.

"Known to or reasonably ascertainable by" means all information in a person's possession or control, plus all information that a reasonable person similarly situated might be expected to possess, control, or know.

"Manufacture" means to manufacture for commercial purposes.

"Manufacture for commercial purposes" means: (1) To import, produce, or manufacture with the purpose of obtaining an immediate or eventual commercial advantage for the manufacturer, and includes among other things, such "manufacture" of any amount of a chemical substance or mixture:

(i) For commercial distribution, including for test marketing.

(ii) For use by the manufacturer, including use for product research and development, or as an intermediate.

(2) Manufacture for commercial purposes also applies to substances that are produced coincidentally during the manufacture, processing, use, or disposal of another substance or mixture, including both byproducts that are separated from that other substance or mixture and impurities that remain in that substance or mixture. Such byproducts and impurities may, or may not, in themselves have commercial value. They are nonetheless produced for the purpose of obtaining a commercial advantage since they are part of the manufacture of a chemical product for a commercial purpose.

"Manufacturer" means a person who imports, produces, or manufactures a chemical substance. A person who extracts a component chemical substance from a previously existing chemical substance or a complex combination of substances is a manufacturer of that component chemical substance.

"Non-isolated intermediate" means any intermediate that is not intentionally removed from the equipment in which it is manufactured, including the reaction vessel in which it is manufactured, equipment which is ancillary to the reaction vessel, and any equipment through which the substance passes during a continuous flow process, but not including tanks or other vessels in which the substance is stored after its manufacture. Mechanical or gravity transfer through a closed system is not considered to be intentional removal, but storage or transfer to shipping containers "isolates" the substance by removing it from process equipment in which it is manufactured.

"Own or control" means ownership of 50 percent or more of a company's voting stock or other equity rights, or the power to control the management and policies of that company. A company may own or control one or more sites. A company may be owned or controlled by a foreign or domestic parent company.

"Parent company" is a company that owns or controls another company.

"Person" includes any individual, firm, company, corporation, joint venture, partnership, sole proprietorship, association, or any other business entity; any State or political subdivision thereof; any municipality; any interstate body; and any department, agency, or instrumentality of the Federal Government.

"Possession or control" means in the possession or control of any person, or of any subsidiary, partnership in which the person is a general partner, parent company, or any company or partnership which the parent company owns or controls, if the subsidiary, parent company, or other company or partnership is associated with the person in the research, development, test marketing, or commercial marketing of the substance in question. Information is in the possession or control of a person if it is:

(1) In the person's own files including files maintained by employees of the person in the course of their employment.

(2) In commercially available data bases to which the person has purchased access.

(3) Maintained in the files in the course of employment by other agents of the person who are associated with research, development, test marketing, or commercial marketing of the chemical substance in question.

"Process" means to process for commercial purposes.

"Process for commercial purposes" means the preparation of a chemical substance or mixture after its manufacture for distribution in commerce with the purpose of obtaining an immediate or eventual commercial advantage for the processor. Processing of any amount of a chemical substance or mixture is included in this definition. If a chemical substance or mixture containing impurities is processed for commercial purposes, then the impurities also are processed for commercial purposes.

"Processor" means any person who processes a chemical substance or mixture.

"Production volume" means the quantity of a substance which is produced by a manufacturer, as measured in kilograms or pounds.

"Propose to manufacture, import, or process" means that a person has made a firm management decision to commit financial resources for the manufacture, import, or processing of a specified chemical substance or mixture.

"Site" means a contiguous property unit. Property divided only by a public right-of-way shall be considered one site. There may be more than one plant on a single site. The site for a person who imports a substance is the site of the operating unit within the person's organization which is directly responsible for importing the substance and which controls the import transaction and may in some cases be the organization's headquarters office in the United States.

"Small manufacturer or importer" means a manufacturer or importer that meets either of the following standards:

(1) *First standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual production or importation volume of a particular substance at any individual site owned or controlled by the manufacturer or importer is greater than 45,400 kilograms (100,000 pounds), the manufacturer or importer shall not qualify as small for purposes of reporting on the production or importation of that substance at that site, unless the manufacturer or importer qualifies as small under standard (2) of this definition.

(2) *Second standard.* A manufacturer or importer of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances produced or imported by that manufacturer or importer.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor

Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales values when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide Federal Register notification when changing the total annual sales values.

"Small quantities solely for research and development" (or "small quantities solely for purposes of scientific experimentation or analysis or chemical research on, or analysis of, such substance or another substance, including such research or analysis for the development of a product") means quantities of a chemical substance manufactured, imported, or processed or proposed to be manufactured, imported, or processed solely for research and development that are not greater than reasonably necessary for such purposes.

"Substance" means either a chemical substance or mixture unless otherwise indicated.

"Test marketing" means the distribution in commerce of no more than a predetermined amount of a chemical substance, mixture, article containing that chemical substance or mixture, or a mixture containing that substance, by a manufacturer or processor, to no more than a defined number of potential customers to explore market capability in a competitive situation during a predetermined testing period prior to the broader distribution of that chemical substance, mixture, or article in commerce.

"Total annual sales" means the total annual revenue (in dollars) generated by the sale of all products of a company. Total annual sales must include the total annual sales revenue of all sites owned or controlled by that company and the total annual sales revenue of that company's subsidiaries and foreign or domestic parent company, if any.

"TSCA" means the Toxic Substances Control Act, 15 U.S.C. 2601 et seq.

**§ 704.5 Exemptions.**

A person who is subject to reporting requirements for a substance identified in this Part is exempt from those requirements to the extent that the person and that person's use of the substance is described in this section. This section is superseded by any TSCA section 8(a) rule that adds to, removes, or revises the exemptions described in this section.

(a) *Articles.* A person who imports, processes, or proposes to import or process a substance identified in this Part solely as part of an article is exempt from the reporting requirements of this Part with regard to that substance.

(b) *Byproducts.* A person who manufactures, imports, or proposes to manufacture or import a substance identified in this Part solely as a byproduct is exempt from the reporting requirements of this Part.

(c) *Impurities.* A person who manufactures, imports, processes, or proposes to manufacture, import, or process a substance identified in this Part solely as an impurity is exempt from the reporting requirements of this Part.

(d) *Non-isolated intermediate.* A person who manufactures or proposes to manufacture a substance identified in this Part solely as a non-isolated intermediate is exempt from the reporting requirements of this Part.

(e) *Research and development.* A person who manufactures, imports, processes, or proposes to manufacture, import, or process a substance identified in this Part only in small quantities solely for research and development is exempt from the reporting requirements of this Part.

(f) *Small manufacturers and importers.* Small manufacturers and importers are exempt from the reporting requirements of this Part.

5. By revising the section heading for § 704.7 to read as follows:

**§ 704.7 Confidential business information claims.**

* * * * *

6. By adding §§ 704.9, 704.11, and 704.13 to read as follows:

**§ 704.9 Where to send reports.**

Reports must be submitted by certified mail to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: 8(a) Reporting.

**§ 704.11 Recordkeeping.**

Each person who is subject to the reporting requirements of this Part must retain the following records for 3 years following the creation or compilation of the record.

(a) A copy of each report submitted by the person in response to the requirements of this Part.

(b) Materials and documentation sufficient to verify or reconstruct the values submitted in the report.

(c) A copy of each notice sent by the person, return receipt requested, to that person's customers for the purpose of notifying their customers of the customer's reporting obligations under this Part.

(d) All return receipts signed by the person's customers who received the notice described in paragraph (c) of this section.

(Approved by the Office of Management and Budget under OMB control number 2010–0019)

**§ 704.13 Compliance and enforcement.**

Violators of the requirements of this Part may be subject to civil administrative penalties up to $25,000 per day of violation or criminal prosecution, as provided in sections 15 and 16 of TSCA. In addition, under section 17, EPA may seek judicial relief to compel submission of required information.

7. By amending Subpart B as follows:

## Subpart B—Chemical-Specific Reporting and Recordkeeping Rules

a. By revising the heading for Subpart B to read as set forth above.

**§§ 704.83, 704.85, and 704.142 [Redesignated as §§ 704.43, 704.45 and 704.102].**

b. By redesignating existing §§ 704.83, 704.85, and 704.142 under Subpart B as §§ 704.43, 704.45, and 704.102 respectively.

**§§ 704.195 and 704.205 [Removed].**

c. By removing §§ 704.195 and 704.205.

8. By adding Subpart C to read as follows:

## Subpart C—CAIR: Comprehensive Assessment Information Rule—General Reporting and Recordkeeping Provisions

Sec.

Sec.



**§ 704.200 Overview of CAIR provisions—Subparts C and D.**

Although the provisions in Subpart A of this Part apply to all of Part 704, EPA may in Subpart C and D of this Part modify the Subpart A provisions of this Part for the purposes of requiring reporting and recordkeeping provisions on specified substances. In the event of a conflict between the provisions of Subparts A and C of this Part, the provisions of Subpart C of this Part shall govern. Subpart C of this Part explains the reporting and recordkeeping provisions for persons who manufacture, import, or process the substances identified in Subpart D of this Part. Subpart D of this Part identifies: the substances for which EPA requires the reporting of information under CAIR; the persons who are required to submit the information; the questions from the CAIR reporting form that must be answered; the time period on which to report; and the effective date of the final rule. The text of Subpart D of this Part is set out in a matrix format and uses symbols to identify some reporting requirements. These symbols are explained in § 704.206. In addition to the matrix, Subpart D also identifies when all reporting forms must be submitted.

**§ 704.203 Definitions.**

All definitions as set forth in section 3 of TSCA and § 704.3 apply in this Subpart. In addition, the following definitions are provided for the purposes of this Subpart.

"Coverage period" means a time-span which is 1 day less than 2 years, as identified in Subpart D, and is the time-span which a person uses to determine his/her reporting year. Subject manufacturing or processing activities may or may not have occurred during the coverage period.

"Manufacturing activities" means all those activities at one site which are necessary to produce a substance identified in Subpart D of this Part and make it ready for sale or use as the listed substance, including purifying or importing the substance.

"Processing activities" means all those activities which include (1) preparation of a substance identified in Subpart D of this Part after its manufacture to make another substance for sale or use, (2) repackaging of the identified substance, or (3) purchasing and preparing the identified substance for use or distribution in commerce.

"Repackager" means a person who buys a substance identified in Subpart D of this Part or mixture, removes the substance or mixture from the container in which it was bought, and transfers this substance, as is, to another container for sale.

"Reporting Period" means the time period during which CAIR reporting forms are to be submitted to EPA.

"Reporting Year" means the most recent complete corporate fiscal year during which a person manufactures, imports, or processes the listed substance, and which falls within a coverage period identified with a substance in Subpart D of this Part.

"Small processor" means a processor that meets either of the following standards:

(1) *First Standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $40 million. However, if the annual processing volume of a particular substance at any individual site owned or controlled by the processor is greater than 45,400 kilograms (100,000 pounds), the processor shall not qualify as small for purposes of reporting on that substance at that site, unless the processor qualifies as small under standard (2) of this definition.

(2) *Second standard.* A processor of a substance is small if its total annual sales, when combined with those of its parent company (if any), are less than $4 million, regardless of the quantity of substances processed by that processor.

(3) *Inflation index.* EPA shall make use of the Producer Price Index for Chemicals and Allied Products, as compiled by the U.S. Bureau of Labor Statistics, for purposes of determining the need to adjust the total annual sales values and for determining new sales when adjustments are made. EPA may adjust the total annual sales values whenever the Agency deems it necessary to do so, provided that the Producer Price Index for Chemicals and Allied Products has changed more than 20 percent since either the most recent previous change in sales values or the date of promulgation of this rule, whichever is later. EPA shall provide **Federal Register** notification when changing the total annual sales values.

**§ 704.205 Limitations on reporting requirements.**

The following limitations apply to the reporting and recordkeeping requirements of Subpart D of this Part.

(a) *Report on TSCA-regulable quantities.* A person must report on only the quantity of a substance that is defined as a chemical substance under TSCA section 3(2).

(b) *Chemical substances from natural sources.* A manufacturer of a chemical substance which is mined or extracted from minerals, ores, petroleum, natural gas, quarried nonmetallic minerals (including extraction of salts from seawater or brines), coal, or atmospheric gases, or from any other natural source, must report only about the manufacturing steps taken, and the uses of, that substance, and not about production of the natural source material or other crude precursors derived from the natural source material.

**§ 704.206 Persons who must report.**

(a) *General requirements.* Manufacturers, importers, and processors must report on each substance identified in Subpart D of this Part if: they are designated in Subpart D as a person who must report on the substance, they manufactured, imported, or processed the substance during the coverage period designated in Subpart D for which reporting on that substance is required, and they are not otherwise exempt.

(b) *Symbols for designating persons who must report.* EPA will designate who must report on each substance identified in Subpart D of this Part by using the following symbols:

(1) "M" means each person who manufactured the substance for commercial purposes.

(2) "I" means each person who imported the substance for commercial purposes.

(3) "P" means each person who processed the substance for commercial purposes.

(4) "X/P" means each person who manufactured, imported, or processed the substance for commercial purposes and distributed the substance under a trade name.

(c) *Special provision for importers.* When two or more persons are involved in a particular import transaction of a substance identified in Subpart D of this Part, and two or more of these persons meet the definition of "importer" for this transaction, they may determine among themselves who should comply with the CAIR reporting and recordkeeping requirements for the substance and have that person list the names of the other importers who were involved in the transaction. If none of the persons involved comply with the CAIR reporting and recordkeeping requirements for that substance, then EPA will hold each of these persons liable for their failure to comply.

(d) *Dual designations.* If a person is engaged in more than one activity (e.g., manufacturing and processing) at the same site for a substance identified in Subpart D of this Part and both activities are listed, then that person must comply with the reporting requirements for both activities.

**§ 704.207 Information to be reported.**

(a) The CAIR reporting form is comprised of 10 sections. Each section contains specific questions which pertain to the subject matter found in that particular section. There is a set of instructions which accompanies the CAIR reporting form. The instructions consist of: specific directions and sample answers relating to certain form questions based on two reporting scenarios, conversion tables, and a glossary which defines key terms. The following is a description of the information contained in each section of the CAIR reporting form.

(1) Section 1: *General Manufacturer, Importer, and Processor Information.*

Respondent Identification
Reporting Status
Certification Statements
Corporate Data
Mixture Identification

(2) Section 2: *Manufacturer, Importer, and Processor Volume, and Use.*

Respondent Activities
Quantity Manufactured, Imported, and Processed
Quantity Exported
Quantity Stored on-site
Product Types
Transportation off-site
Customer Use

(3) Section 3: *Processor Raw Material Identification.*

Quantity Used and Price of Listed Substance
Transportation to Site
Listed Substance in the Form of a Mixture

(4) Section 4: *Physical/Chemical Properties.*

Purity of Listed Substance
MSDS Exists/Submitted
Physical State of Listed Substance
Particle Size of Listed Substance
Fire, Explosion, and Other Hazard Data
Shipment Restrictions

(5) Section 5: *Environmental Fate.*

Rate Constants and Transformation Products
Partition Coefficients

(6) Section 6: *Economic and Financial Information.*

Company Type
Product Types/Product Markets
Commercially Available Substitutes
Production Costs
Product Sales

(7) Section 7: *Manufacture and Process Information.*

Process Block Flow Diagrams
Unit Operation Equipment Types
Process Stream Description and Characterization

(8) Section 8: *Residual Treatment, Generation, Characterization, Transportation, and Management.*

Residual Treatment Block Flow Diagrams
Unit Operation Equipment Types
Process Stream Description and Characterization
Residual Management Methods
Residual Handling Instructions/Restrictions
Storage or Treatment in Tanks and Waste Piles
Storage, Treatment, or Disposal in Containers
Residual Handling
Burning in Boilers and Incinerators
Storage, Treatment, or Disposal in Land Treatment Sites and Surface Impoundments
Disposal in Landfill Cells and Injection Wells

(9) Section 9: *Worker Exposure.*

Employment and Potential Exposure Profile
Records Maintained for Workers
Job Titles by Labor Category
Exposure Characterization
Process Block Flow Diagram with Associated Work Areas
Description of Work Areas and Worker Activities
Work Place Monitoring Programs
Personal/Ambient Air Monitoring
Medical, Monitoring Tests
Engineering Controls
Equipment/Process Modifications
Personal Protective Clothing and Safety Equipment
Respirator Maintenance Activity and Training Programs
Work Practices
Housekeeping Tasks
Medical, Leak, Spill, Worker Safety, and Health Plans

(10) Section 10: *Environmental Release.*

Plant Location
Meteorological Conditions
Groundwater Below Plant Site
Routine Releases
Quantity of Listed Substance Released
Control Technologies
Point Source Emissions
Emission Characteristics
Equipment Leaks and Detection
Pressure Relief Devices with Controls
Raw Material, Intermediate, and Product Storage Emissions
NPDES, POTW, and Non-point Discharges
Releases to Soils, Groundwater, and Drinking Water
Spills and Other Non-routine Releases
Weather Conditions, Date and Time of Release
Method of Release and Quantity Released
Cause and Result of Release
Authorities and Population Notified
Personal Injuries and Casualties
Release Prevention Practices
Repairs and/or Preventative Measures

(b) [Reserved]

**§ 704.208 Distribution of substances under a trade name.**

(a) The X/P designation requires each person who manufactured, imported, or processed a substance identified in Subpart D of this Part for commercial purposes and who distributed the substance under a trade name to do one of the following.

(1) *Trade name list.* Submit to EPA a list of all trade names under which the person distributes the substance. Submissions must have a postmark date no later than 1 day after the effective date of the final rule listing the substance in Subpart D of this Part. Trade name lists must be submitted by certified mail to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR Trade Name List. Include the date of the **Federal Register** notice you are subject to, the substance name, CAS number, trade name(s) associated with that substance, the company's name, address and telephone number, and the address and telephone number of a technical contact. EPA will issue all submitted trade names in a **Federal Register** notice in order to notify all processors of these trade name substances of their CAIR reporting and recordkeeping obligations.

(2) *Customer reporting.* Submit to EPA a CAIR reporting form that answers the processor's reporting requirements for each customer who would be required to report if the customer knew it was processing the listed substance. Persons may only choose to report for their customers if such persons can supply all of the information requested. Persons reporting on their customers' activities are liable for information reported incorrectly just as they are for reporting incorrectly on their own activities. Reporting is due no later than 90 days after the effective date of the final rule listing the substance in Subpart D of this Part.

(3) *Customer notification.* Notify each customer who would be required to

report if the customer knew they were processing the listed substance, of the specific section in Subpart D of this Part which identifies the substance and the processor reporting requirements. The customer notification must be sent by certified mail, return receipt requested, within 30 days of the effective date of the final rule that added the substance to Subpart D of this Part. The notification must specify which questions from the form must be answered, on which trade name substances, when the reports are due, the citation and date of the final rule that added the substance to Subpart D, and where to send the reports. Customers must report within the time period indicated in § 704.223(b).

(b) *Notification extensions.* Any person who chooses to notify their customers of their reporting obligations, but cannot meet the notification deadline, may apply for a reasonable extension of time. Requests for extensions must be made in writing, contain a justification for such a request, and be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR customer notification extension. Extension requests must be postmarked no later than 5 days before the notification deadline.

(c) [Reserved]

**§ 704.210 Exemptions.**

The reporting exemptions set out in § 704.5 apply to CAIR reporting requirements. This section contains additional exemptions from reporting that also apply to CAIR reporting requirements. EPA may modify exemptions for CAIR reporting requirements for specific substances by specifying the modification in Subpart D of this Part.

(a) *Repackager.* A person who is solely a repackager as defined in § 704.203, and does not engage in any other processing activities, is exempt from the reporting and recordkeeping requirements of this Subpart.

(b) *Small processor.* A person who qualifies as a small processor as this term is defined in § 704.203 is exempt from the reporting and recordkeeping requirements of this Subpart.

(c) *Previous submission of data.* (1) A submitter who previously provided information on a substance identified in Subpart D of this Part to EPA or another Federal agency on a CAIR reporting form qualifies for a partial exemption from current reporting requirements for that substance and site if the person previously reported voluntarily or pursuant to previous reporting and recordkeeping requirements of this Subpart. The previously submitted report must have covered a complete corporate fiscal year that ended no more than 3 years before the effective date of the current reporting requirements for the substance, and the data on the previously submitted CAIR form must be current, accurate, and complete for the reporting year determined using the coverage periods specified in Subpart D of this Part.

(2) If the submitter qualifies for this partial exemption because the submitter previously submitted information voluntarily to EPA or another agency, then that person may, in response to a specified reporting requirement on a substance identified in Subpart D of this Part, submit only a completed Section 1 of the CAIR reporting form and a copy of the previous submission. To use this partial exemption, the person must sign the certification set out in Section 1 of the CAIR reporting form that pertains to the use of this exemption.

(3) If the submitter qualifies for this partial exemption because the submitter previously submitted information to EPA pursuant to reporting requirements of this Subpart, then that person may, in response to a specified reporting requirement on a substance identified in Subpart D of this Part, submit only a completed Section 1 of the CAIR reporting form and indicate the date of and the technical contact for the previous submission. To use this partial exemption, the person must sign the certification set out in Section 1 of the CAIR reporting form that pertains to the use of this exemption.

**§ 704.212 Questions selected.**

(a) *Designated questions.* Each person who is required to report on a substance identified in Subpart D of this Part must answer only the CAIR reporting form questions designated in Subpart D. A CAIR reporting form and instructions can be obtained from the TSCA Assistance Office as outlined in § 704.216.

(b) *Specifying the questions.* (1) The questions selected will always include Section 1 of the CAIR reporting form.

(2) Other questions selected will be specified by section or question number (e.g., 3 all or 3.01 and 3.02).

(i) Whenever the questions selected specify a section of the CAIR reporting form followed by the word "all," each person who is required to report on the identified substance must answer all parts of each question within the section.

(ii) Whenever the questions selected specify a question from the CAIR reporting form, each person who is required to report on the identified substance must answer all parts of the question.

(c) *One report per site.* Each person who is required to report on a substance identified in Subpart D of this Part must report the required information separately for each site at which that person manufactured, imported, or processed the substance.

(d) *Activities on which to report.* Each person who is required to report on a substance identified in Subpart D of this Part must report the required information for each activity which occurs at the site. If a person is engaged in more than one activity (e.g., manufacturing and processing) at the same site with respect to the substance, such person is only required to report on the activity or activities specified in Subpart D. If a person is required to report on more than one activity for the same substance, such person must report on all specified activities on the same form.

**§ 704.214 Coverage period.**

(a) Each person who is required to report on a substance identified in Subpart D of this Part must comply with the reporting requirement for the coverage period designated in the Subpart D matrix.

(b) EPA will specify for each reporting requirement the coverage period on which the information must be reported.

(c) Activities which occurred during a coverage period are reportable if they occurred during the reporting year.

(d) Persons who were engaged in reportable activities in more than one coverage period must report only on the most recent coverage period in which the activities occurred.

**§ 704.215 Reporting period.**

(a) *When reports are due.* (1) Persons who are required to report on a substance identified in Subpart D of this Part, including those who choose to report for their customers who process the identified substance, must submit their completed CAIR forms during the reporting period identified in § 704.223(a).

(2) Persons who were notified by a supplier that reporting is required on a trade name substance, must submit their completed CAIR forms during the reporting period identified in § 704.223(b).

(b) *Reporting extensions.* Persons who cannot submit their reports by the deadline as specified in § 704.223 may

apply for a reasonable extension of time. Requests for extensions must be made in writing, contain a justification for such requests, and be addressed to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460, ATTENTION: CAIR reporting extension. Extension requests must be postmarked no later than 30 days after the effective date of the addition of a substance or mixture to Subpart D of this Part or 30 days after notification by a supplier as described in § 704.208.

**§ 704.216 How to obtain a CAIR reporting form.**

CAIR forms and instructions may be obtained by telephoning or writing the TSCA Assistance Office. Phone Number: (202) 554–1404, TDD (202) 554–0551. Address: TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

**§ 704.217 How to submit completed CAIR reporting forms.**

(a) Each person who is required to report on a substance identified in Subpart D of this Part may submit their reports from the individual sites or through the company headquarters. However, a separate report must be submitted for each substance at each site at which the person engages in one or more of the activities for which EPA is requesting information.

(b) Submitters must send their completed forms to: TSCA Document Processing Center (TS–790), Office of Toxic Substances, U.S. Environmental Protection Agency, Rm. L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: CAIR Reporting.

**§ 704.219 Confidential business information claims.**

(a) Submitters may assert a Confidential Business Information (CBI) claim for information submitted to EPA only if: the claim is asserted in accordance with this section; and release of the information would reveal trade secrets or confidential commercial or financial information, as provided in section 14(a) of TSCA. EPA will place all information not claimed as confidential in the manner described in this section in the public file without further notice to the respondent.

(b) Submitters who assert a CBI claim for submitted information must provide EPA with two copies of their submission. The first copy must be complete and contain all information being claimed as confidential. The second copy must contain only information not claimed as confidential. EPA will place the second copy of the submission in the public file. Failure to furnish a second copy of the submission when information is claimed as confidential in the first copy will be considered a presumptive waiver of the claim of confidentiality. EPA will notify the submitter by certified mail that a finding of a presumptive wavier of the claim of confidentiality has been made. The submitter has 30 days from the date of receipt of notification to submit the required second copy. Failure to submit the second copy will cause EPA to place the first copy in the public file.

(c) Submitters may assert CBI claims only at the time a completed CAIR form is submitted and only in the specified manner.

(1) Submitters must clearly mark all information claimed as confidential. Submitters can claim information submitted on a reporting form as confidential by placing in the CBI box, which is adjacent to the question, the letter or letters that indicate the category of the information, as enumerated in paragraph (e) of this section, which is being claimed confidential. Respondents who claim information submitted on continuation sheets to the form as confidential must do so by writing the word "Confidential" at the top of the page on which the information appears and by placing brackets ([ ]) around the information claimed confidential.

(2) [Reserved]

(d) Submitters must substantiate all claims of confidentiality at the time the submitter asserts the claim (i.e., when the reporting form is submitted). Failure to provide substantiation of a claim at the time the submitter submits the reporting form will result in a waiver of the confidentiality claim, and the information may be disclosed to the public without further notice to the submitter.

(e) EPA has identified six information categories as those which will encompass all claims of confidentiality:

Submitter identity=h,
Substance identity=i,
Volume manufactured, imported, or processed=j,
Use information=k,
Process information=l, and
Other information=m.

Submitters who assert a CBI claim on the reporting form must mark the letter or letters (h through m) that represent the appropriate category(ies) of confidentiality for the information in the box adjacent to the question. Confidentiality claims for information on continuation sheets are asserted by placing the appropriate letter(s) in the margin by the information claimed confidential.

(f) Submitters who assert any CBI claims must substantiate all claims by completing all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

9. Subpart D is added to read as follows:

## Subpart D—CAIR Specific Reporting and Recordkeeping Requirements

Sec.
704.220 Chemical substance matrix requirements.
704.223 Reporting period.
704.225 Chemical substance matrix by CAS registry number.

**§ 704.220 Chemical substance matrix requirements.**

For each substance listed in the matrix in § 704.225, EPA has identified the persons who must report on that substance by means of the symbols M, I, P, and X/P. An explanation of these symbols is given in § 704.206 of Subpart C of this Part. These designated persons must respond to all of the matrix's reporting requirements. All of the CAIR reporting and recordkeeping requirements are explained in Subpart C of this Part. Persons who are required to report must comply with Subpart C of this Part.

**§ 704.223 Reporting period.**

(a) Reports must be submitted to the Agency no latter than 90 days after the effective date of the final rule listing the substance in § 704.225, except as described in § 704.223(b).

(b) Persons subject to X/P designations and who chose to notify their customers, must inform their customers that reports are due within 90 days of receipt of notification.

**§ 704.225 Chemical substance matrix by CAS registry number.**

The following codes are used in this section.

M=Each Person who Manufactured the Substance for Commercial Purposes

I=Each Person who Imported the Substance for Commercial Purposes
P=Each Person who Processed the Substance for Commercial Purposes
X/P=Each Person who Manufactured, Imported, or Processed the Substance for Commercial Purposes and Distributed the Substance under a Trade Name

(a) List of Chemicals.

| CAS No. | Chemical name | Who must report | Exemptions added (+) removed (−) | Coverage period | Questions selected | Effective date |
|---|---|---|---|---|---|---|
| 57-56-7 | Hydrazinecarboxamide | M, X/P, I, P. | | 2/8/87-2/5/89 | 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06 | 2/6/89 |
| 60-35-5 | Acetamide (Ethanamide) | M, I | | 2/8/87-2/5/89 | 1, 2.01, 2.04 thru 2.06, 2.08, 2.12 thru 2.14, 2.17, 3.04, 9.04 thru 9.07 | 2/6/89 |
| 79-27-6 | Ethane, 1,1,2,2-tetrabromo- | M, X/P, I, P. | | 2/8/87-2/5/89 | 1, 2.08, 2.12, 2.13 | 2/6/89 |
| 85-01-8 | Phenanthrene | M, X/P, I, P. | | 2/8/87-2/5/89 | 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06 | 2/6/89 |
| 91-08-7 | Benzene, 1,3-diisocyanato-2-methyl- (2,6-Toluene diisocyanate). | X/P, P | | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.08 thru 10.16, 10.23 | 2/6/89 |
| | | M, I | | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.09 thru 10.16, 10.23 | 2/6/89 |
| 93-00-5 | 2-Naphthalenesulfonic acid, 6-amino- (Broenner's acid). | M, I | | 2/8/87-2/5/89 | 1, 2.01, 2.04 thru 2.06, 2.08, 2.11, 2.12, 2.17, 3.04, 4.01, 9.07, 10.05, 10.06 | 2/6/89 |
| 101-14-4 | Benzenamine, 4,4'-methylenebis[2-chloro- (MBOCA). | X/P, P | | 2/8/87-2/5/89 | 1, 9.01, 9.03, 9.06, 9.08, 9.12, 9.15 | 2/6/89 |
| 115-96-8 | Ethanol, 2-chloro-, phosphate (3:1) (Tris(2-chloroethyl) phosphate). | M, I | | 2/8/87-2/5/89 | 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06 | 2/6/89 |
| 129-00-0 | Pyrene (Benzo[def]phenanthrene) | M, I | | 2/8/87-2/5/89 | 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06 | 2/6/89 |
| 563-41-7 | Hydrazinecarboxamide, monohydrochloride (Semicarbazide hydrochloride). | M, X/P, I, P. | | 2/8/87-2/5/89 | 1, 2.08, 2.12, 2.13, 9.02, 9.03, 9.06 | 2/6/89 |
| 584-84-9 | Benzene, 2,4-diisocyanato-1-methyl- (2,4-Toluene diisocyanate). | X/P, P | | 2/8/87-2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.08 thru 10.16, 10.23 | 2/6/89 |

| CAS No. | Chemical name | Who must report | Exemptions added (+) removed (−) | Coverage period | Questions selected | Effective date |
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| 624–92–0 | Disulfide, dimethyl (Dimethyl disulfide). | M, I | | 2/8/87–2/5/89 | 1, 2.01, 2.03, 2.05 thru 2.08, 2.11 thru 2.14, 2.16, 2.17, 9.02, 10.05, 10.06 | 2/6/89 |
| 1321–38–6 | Benzene, diisocyanatomethyl- (Unspecific toluene diisocyanate). | X/P, P | | 2/8/87–2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.08 thru 10.16, 10.23 | 2/6/89 |
| | | M, I | | 2/8/87–2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23 | 2/6/89 |
| 5470–11–1 | Hydroxylamine, hydrochloride (Hydroxylammonium chloride). | M, X/P, I, P | | 2/8/87–2/5/89 | 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01 | 2/6/89 |
| 7782–50–5 | Chlorine | M | | 2/8/87–2/5/89 | 1, 2.05 thru 2.07, 2.11, 4.01, 7.03 thru 7.06, 10.02, 10.08 | 2/6/89 |
| 7803–49–8 | Hydroxylamine (Oxammonium) | M, X/P, I, P | | 2/8/87–2/5/89 | 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01 | 2/6/89 |
| 10039–54–0 | Hydroxylamine, sulfate (2:1) (Hydroxylammonium). | M, X/P, I, P | | 2/8/87–2/5/89 | 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01 | 2/6/89 |
| 10046–00–1 | Hydroxylamine, sulfate (1:1) (Hydroxylamine acid sulfate). | M, X/P, I, P | | 2/8/87–2/5/89 | 1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01 | 2/6/89 |
| 26471–62–5 | Benzene, 1,3-diisocyanatomethyl- (Toluene diisocyanate). | X/P, P | | 2/8/87–2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.08 thru 10.16, 10.23 | 2/6/89 |
| | | M, I | | 2/8/87–2/5/89 | 1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.05, 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06, 10.09 thru 10.16, 10.23 | 2/6/89 |

(b) [Reserved]

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Thursday, December 22, 1988

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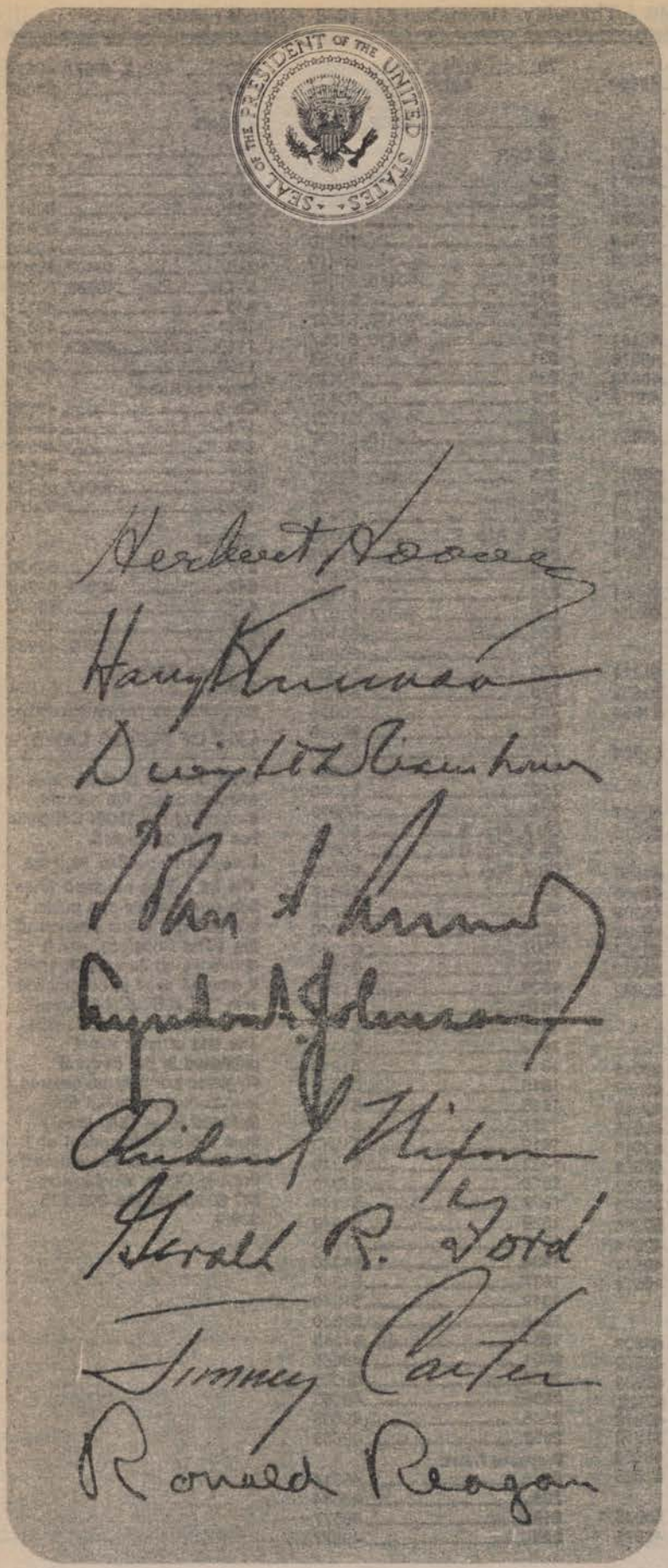


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